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FEDERAL STATUTES

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ANNOTATED

Containing all the Laws of the United States of a General and
Permanent Nature in force on the first day
of January, 1903

COMPILED UNDER THE EDITORIAL SUPERVISION OF
WILLIAM M. MCKINNEY
Editor of the Encyclopædia of Pleading and Practice
AND
PETER KEMPER, JR.

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Sec. 388. [*Establishment of the Post-Office Department.*] There shall be at the seat of Government an Executive Department to be known as the Post-Office Department, and a Postmaster-General, who shall be the head thereof, and who shall be appointed by the President, by and with the advice and consent of the Senate, and who may be removed in the same manner; and the term of the Postmaster-General shall be for and during the term of the President by whom he is appointed, and for one month thereafter, unless sooner removed. [R. S.]

Act of May 8, 1794, ch. 23, 1 Stat. L. 357; Act of June 8, 1872, ch. 335, 17 Stat. L. 283. Sections 388-414 constitute title 9 of the Revised Statutes, "The Post-office Department."

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Sec. 389. [*Assistant Postmasters-General.*] There shall be in the Post-Office Department three Assistant Postmasters-General, who shall be appointed by the President, by and with the advice and consent of the Senate, and who may be removed in the same manner, and who shall be entitled to a salary of four thousand dollars a year each. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 284; Act of March 3, 1873, ch. 226, 17 Stat. L. 508.

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SEC. 1. [*Fourth Assistant Postmaster-General.*] * * * For Fourth Assistant Postmaster-General, four thousand dollars. * * * [26 Stat L. 944.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1891, ch. 541. There is no other provision relating to the appointment of this officer.

Sec. 390. [*Assistant Attorney-General for Post-Office Department.*] There shall be employed in the Post-Office Department one Assistant Attorney-General, who shall be appointed by the Postmaster-General, and shall be entitled to a salary of four thousand dollars a year. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 284.

The appropriation acts have not adhered to the salary fixed by this section.

Assistant attorney. — Provision is made for an assistant attorney in the appropriation acts. See Act of April 28, 1902, ch. 594, 32 Stat. L. 164.

SECS. 391, 392. [*Superseded.*]

These sections were as follows:

"**Sec. 391.** [*Oath of office.*] Before entering upon the duties of his office, and before he shall receive any salary, the Postmaster-General and each of the persons employed in the postal service shall respectively take and subscribe, before some magistrate or other competent officer, the following oath: 'I, A. B., do solemnly swear (or affirm) that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any money belong-

ing to the said United States which may come into my possession or control: So help me, God.'

"**Sec. 392.** [*Oath, before whom taken.*] Any officer, civil or military, holding a commission under the United States, is authorized to administer and certify the oath prescribed by the preceding section."

These sections were incorporated into the Revised Statutes from the Act of June 8, 1872, ch. 335, sec. 15, 17 Stat. L. 287. They were superseded by the amendment of such section by the Act of March 5, 1874, ch. 46, 18 Stat. L. 19. See following text.

An act to amend the fifteenth section of an act approved June eighth, eighteen hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

[*Act of March 5, 1874, ch. 46, 18 Stat. L. 19.*]

[*Oath of office — before whom taken.*] That section fifteen of the act "to revise, consolidate and amend the statutes relating to the Post Office Department," approved June eighth, eighteen hundred and seventy-two, be amended to read as follows:

"SEC. 15. That before entering upon the duties, and before they shall receive any salary, the Postmaster General, and all persons employed in the postal service, shall respectively take and subscribe before some magistrate or other competent officer authorized to administer oaths by the laws of the United States, or of any State or Territory, the following oath or affirmation:

"I, A. B. do solemnly swear (or affirm, as the case may be,) that I will faithfully perform all the duties required of me and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control;

"And I also further swear (or affirm) that I will support the Constitution of the United States; so help me God."

"And this oath or affirmation may be taken before any officer civil or military holding a commission under the United States, and such officer is hereby authorized to administer and certify such oath or affirmation." [18 Stat. L. 19.]

Sec. 393. [*Clerks and employees.*] There shall be in the Post-Office Department:

One chief clerk, at a salary of two thousand two hundred dollars a year.

One superintendent of the Post-Office building and disbursing clerk, at a salary of two thousand three hundred dollars a year.

One topographer, at a salary of two thousand five hundred dollars a year.

One stenographer, at a salary of one thousand eight hundred dollars a year.

One messenger to the Postmaster-General, at a salary of nine hundred dollars a year.

One captain of the watch, at a salary of one thousand dollars a year.

One engineer, at a salary of one thousand six hundred dollars a year.

One assistant engineer, at a salary of one thousand dollars a year.

One carpenter, at a salary of one thousand two hundred and fifty-two dollars a year.

One assistant carpenter, at a salary of one thousand dollars a year.

One fireman and blacksmith, at a salary of nine hundred dollars a year.

Two firemen, at a salary of seven hundred and twenty dollars a year each.

Three female laborers, at a salary of four hundred and eighty dollars a year each.

In the office of the money-order system:

One superintendent, at a salary of four thousand dollars a year.

One chief clerk, at a salary of two thousand dollars a year.

In the office of foreign mails:

One superintendent, at a salary of four thousand dollars a year.

One chief clerk, at a salary of two thousand dollars a year.

In the dead-letter office:

One chief of division, at a salary of two thousand five hundred dollars a year.

In the office of mail-depredations:

One chief of division, at a salary of two thousand five hundred dollars a year.

In the office of the blank-agency:

One superintendent, at a salary of one thousand eight hundred dollars a year.

One assistant superintendent, at a salary of one thousand six hundred dollars a year.

Four assistants, at a salary of one thousand two hundred dollars a year each.

In the office of each of the Assistant Postmasters-General:

One chief clerk, at a salary of two thousand dollars a year. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 284; Act of March 3, 1873, ch. 226, 17 Stat. L. 508.

The designation, number, and compensation of the clerks and employees of the post-office department have been changed from year to

year by the various appropriation acts, practically superseding the above section. The provisions of the Appropriation Act for the year ending June 30, 1903, are found in Act of April 28, 1902, ch. 594, 32 Stat. L. 164.

[SEC. 1.] [*Substitutes for clerks subpoenaed as witnesses.*] * * * That the Postmaster-General be, and he is hereby, authorized to employ substitutes in the place of clerks subpoenaed as witnesses in the United States courts in cases arising under the United States laws, and to expend for the employment of such substitutes a sum equal to the compensation allowed the clerks during the time actually absent from duty attending court. * * * [30 Stat. L. 440.]

This is from the Postal Service Appropriation Act of June 13, 1898, ch. 446.

Sec. 394. [*Superintendent of free delivery.*] The Postmaster-General may designate one of the present fourth-class clerks to act as superintendent of free delivery in the Post-Office Department, at an annual salary of two thousand five hundred dollars: *Provided*, That the salary hereby fixed shall terminate at the end of the fiscal year ending June thirtieth, eighteen hundred and seventy-four. [R. S.]

Act of March 3, 1873, ch. 231, 17 Stat. L. 557.

See following text.

[SEC. 1.] [*Superintendent of free delivery.*] * * * And for the more efficient management of the free-delivery system, the Postmaster-General may designate a fourth class clerk to act as superintendent of free delivery in the Post-Office Department at an annual salary of two thousand five hundred dollars; * * * [18 Stat. L. 231.]

This is from the Postal Service Appropriation Act of June 23, 1874, ch. 456. The later appropriation acts provide compensation for

a general superintendent of free delivery and assistant superintendents. See Act of April 28, 1902, ch. 594, 32 Stat. L. 164.

[SEC. 1.] [*Per diem of assistant superintendents of free delivery.*] * * * Office First Assistant Postmaster-General: The assistant superintendents of

free-delivery shall hereafter be allowed a per diem of four dollars in lieu of all expenses when traveling on business of the Department. * * * [30 Stat. L. 884.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Feb. 24, 1899, ch. 187. The only statutory recognition of assistant superintendents is in the annual

appropriation acts; the first provision for two being in the Act of Feb. 19, 1897, ch. 265, sec. 1, 29 Stat. L. 573.

An act providing for the appointment of an assistant General Superintendent and a chief clerk, Railway Mail Service.

[Act of April 16, 1890, ch. 85, 26 Stat. L. 56.]

[Assistant general superintendent and chief clerk railway mail service.] That the Postmaster-General may appoint, and assign to duty, one assistant general superintendent, Railway Mail Service, who shall be paid a salary of three thousand dollars per year; and one chief clerk of Railway Mail Service, to be employed in the Post-Office Department, who shall be paid two thousand dollars per year; said assistant general superintendent and chief clerk to be also paid their necessary and actual expenses while traveling on the business of the Department. The salaries and expenses of these officers shall be paid out of the appropriation for the transportation of mail on railways. [26 Stat. L. 56.]

Sec. 395. [Seal. See SEALS.]

Sec. 396. [Duties of Postmaster-General.] It shall be the duty of the Postmaster-General:

First. To establish and discontinue post-offices.

Second. To instruct all persons in the postal service with reference to their duties.

Third. To decide on the forms of all official papers.

Fourth. To prescribe the manner of keeping and stating accounts.

Fifth. To enforce the prompt rendition of returns relative to accounts.

Sixth. To control, according to law, and subject to the settlement of the Sixth Auditor, all expenses incident to the service of the Department.

Seventh. To superintend the disposal of the moneys of the Department.

Eighth. To direct the manner in which balances shall be paid over; issue warrants to cover money into the Treasury; and to pay out the same.

Ninth. To superintend generally the business of the department, and execute all laws relative to the postal service. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 285.

Ordering return of lottery postal orders.—An order of the postmaster-general to a postmaster forbidding the payment of postal orders drawn to the order of certain persons, and ordering their return to the remitters, is an order which the postmaster-general has au-

thority to make when it appears that in his judgment the parties are conducting a lottery, or other similar business, through the mails, and this section imposes upon a postmaster the duty of obeying such order. See sections 3824, 3894, 3939, and 4041, R. S. *Enterprise Sav. Assoc. v. Zumstein*, (C. C. A. 1895) 67 Fed. Rep. 1000.

Sec. 397. [Property in charge of the Department. See PUBLIC PROPERTY, BUILDINGS, AND GROUNDS.]

[SEC. 1.] [Disposal of accumulated useless papers.] * * * That the Postmaster-General is hereby authorized to sell as waste paper, or otherwise

dispose of, the files of papers which have accumulated, or may hereafter accumulate, in the Post-Office Department that are not needed in the transaction of current business and have no permanent value or historical interest; and the proceeds of said sales he shall pay into the treasury, and make report thereof to Congress. * * * [21 Stat. L. 412.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1881, ch. 130.

For other provisions, see POSTAL SERVICE, vol. 5, p. 780; EXECUTIVE DEPARTMENTS, vol. 3, pp. 65, 66.

Sec. 398. [*Postal arrangements with foreign countries.*] For the purpose of making better postal arrangements with foreign countries, or to counteract their adverse measures affecting our postal intercourse with them, the Postmaster-General, by and with the advice and consent of the President, may negotiate and conclude postal treaties or conventions, and may reduce or increase the rates of postage on mail-matter conveyed between the United States and foreign countries. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 304. See further POSTAL SERVICE, vol. 5, p. 931.

Constitutionality. — Such legislation as that contained in this section, and the practice of the government thereunder from the beginning of the government, sanction an interpretation of the Constitution different from that which might be reached by the ordinary rules of construction were the question a new one, and the provisions of this section are not in conflict with that part of section 2, article II., of the Constitution, giving the President "power by and with the advice and consent of the Senate to make treaties," etc. It seems that the right of Congress to vest in the postmaster-general power to conclude conventions with foreign governments for the cheaper, safer, and more convenient carriage of foreign mails may be derived from the authority given that body in the seventh clause of section 8, article I., of the Constitution, to establish post offices and post roads. (1890) 19 Op. Atty.-Gen. 513.

Registry provisions. — The postmaster-general has no authority, under this section, to negotiate a postal convention providing for the payment of indemnity for the loss of registered articles or letters. To enable him to do so further legislation is required. (1878) 15 Op. Atty.-Gen. 462.

"In the absence of any other expression of the will of Congress, this section would authorize the postmaster-general to not only negotiate and conclude on behalf of the United States these different conventions, as he did do, but to also adopt and carry out the registry provisions of those conventions, including those for indemnity; and if when the first of those conventions went into effect he had done so it would have been strictly within his province. But a long-continued course of conduct on the part of a government or one of its departments may have

the force and effect of law in either conferring, denying, or limiting the power of executive departments or officers. And when from the first, hitherto, through so many years, the post-office department has, with the tacit assent and approval of Congress, declined to adopt or carry out the registry system of these conventions, this would seem to have become the settled policy of the government, and to now adopt one so radically different would seem to be the engrafting upon our postal system by the postmaster-general not only a plan hitherto unknown in our system, but one which has for many years had the actual disapproval of the post-office department and the tacit disapproval of Congress, and would seem to be unadvisable and of at least doubtful authority." But the Act of Feb. 27, 1897, 28 Stat. L. 599, in authorizing the postmaster-general to establish a system of registration and, as part of such system, to provide a limited indemnity for first-class registered matter lost in the mails, especially in connection with the fact of the long-continued refusal of the government to adopt the system of those conventions, must be taken as the only plan which Congress is at present willing to adopt, and as prohibiting to the postmaster-general the establishment or adoption of any other rules than those thus authorized. (1899) 22 Op. Atty.-Gen. 363.

Parcels of mail matter. — Under this section the postmaster-general has power, with the approbation of the President, to conclude a postal convention with a foreign country for admission to and transmission through the mails exchanged with such foreign country of parcels of mail matter of either class exceeding four pounds in weight. The limitation as to weight of mail packages in sec. 3879, R. S., applies only to domestic mail service. (1887) 19 Op. Atty.-Gen. 39. See also (1890) 19 Op. Atty.-Gen. 513.

Sec. 399. [*Publication of postal conventions.*] The Postmaster-General shall transmit a copy of each postal convention concluded with foreign governments to the Secretary of State, who shall furnish a copy of the same to the

Congressional Printer for publication; and the printed proof-sheets of all such conventions shall be revised at the Post-Office Department. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 287.
See further PUBLIC PRINTING.

Sec. 3804. [*Copies of postal conventions for printing.*] The Postmaster-General shall transmit a copy of every postal convention to the Secretary of State for the purpose of being printed, and the printed copy thereof shall be revised by the Post-Office Department instead of by the Secretary of State. [R. S.]

Act of March 9, 1868, ch. 22, 15 Stat. L. 40.

[SEC. 1.] [*Designation of officer to sign warrants.*] * * * And the Postmaster-General may from time to time designate any officer of the Post Office Department, above the grade of fourth-class clerk, to sign warrants in his stead, and such warrants when so signed, shall be of the same validity as if they had been signed by the Postmaster-General. * * * [26 Stat. L. 1081.]

This is from the Postal Service Appropriation Act of March 3, 1891, ch. 547.

Warrants in money-order business. — See POSTAL SERVICE, vol. 5, p. 941.

The above provisions superseded the following provisions of the Act of Feb. 25, 1882, ch. 16, 22 Stat. L. 4.

[SEC. 1.] "That the Postmaster-General may, by appointment under his hand and official seal, delegate to the Third Assistant Postmaster-General authority to sign in his

stead all warrants, registered and countersigned by the Auditor of the Treasury for the Post-Office Department, for the payment of money from the public Treasury on account of the postal service.

"SEC. 2. That warrants signed by the said Third Assistant Postmaster-General shall be in all cases of the same validity as if they had been signed by the Postmaster-General himself." [22 Stat. L. 4.]

An act establishing post-roads and for other purposes.

[Act of March 3, 1877, ch. 103, 19 Stat. L. 335.]

[SEC. 1.] [*Post roads established.*]

SEC. 2. [*First Assistant Postmaster-General may approve postmasters' bonds and sign contracts for supplies.*] That from and after the passage of this act the bonds of all postmasters may by the direction of the Postmaster General be approved and accepted, and the approval and acceptance signed by the First Assistant Postmaster General in the name of the Postmaster General; and all contracts for stationery, wrapping-paper, letter-balances, scales, and street letter-boxes, for the use of the postal service may be signed in like manner by the First Assistant Postmaster General in the place and stead of the Postmaster General, and his signature shall be attested by the seal of the Post-Office Department. [19 Stat. L. 335.]

Approval of postmasters' bonds by fourth assistant postmaster-general. See Act of Dec. 21, 1893, ch. 6, *infra*, p. 9.

SEC. 3. [*Second Assistant may sign contracts for mail transportation, etc.*] That the Second Assistant Postmaster General on the order of the Postmaster General may sign with his name, in the place and stead of the Postmaster General, and attest his signature by the seal of the Post-Office Department, all contracts made in the said Department for mail transportation and for supplies of mail-bags, mail-catchers, mail-locks, and keys and all other articles necessary and incidental to mail-transportation. [19 Stat. L. 335.]

SEC. 4. [*Third Assistant may sign contracts for postage stamps, etc.*] That the Third Assistant Postmaster General, when directed by the Postmaster General, may also sign, in his name, in the place and stead of the Postmaster General, and attest his signature by the seal of the Post Office Department, all contracts for supplies of postage-stamps, stamped envelopes, newspaper-wrappers, postal-cards, registered-package envelopes, locks, seals, and official envelopes for the use of postmasters, and return of dead letters, that may be required for the postal service. [19 Stat. L. 335.]

SEC. 5. [*Letters, etc., on official business may be sent free.* See POSTAL SERVICE, vol. 5, p. 859.]

SEC. 6. [*Official envelopes — indorsement.* See POSTAL SERVICE, vol. 5, p. 860.]

SEC. 7. [*Members of Congress may frank public documents.* See POSTAL SERVICE, vol. 5, p. 860.]

SEC. 8. [*Post routes established.*]

An act authorizing the Fourth Assistant Postmaster-General to approve postmasters' bonds.

[Act of Dec. 21, 1893, ch. 6, 28 Stat. L. 21.]

[*Fourth Assistant Postmaster-General may approve postmasters' bonds.*] That from and after the passage of this Act the bonds of all postmasters, by the direction of the Postmaster-General, may be approved and accepted and the approval and acceptance signed by the Fourth Assistant Postmaster-General in the name of the Postmaster-General. [28 Stat. L. 21.]

Sec. 400. [*Blank-agency at Washington.*] The Postmaster-General may establish a blank-agency for the Post-Office Department, to be located at Washington, District of Columbia. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 289.

Sec. 401. [*Foreign dead-letters.*] The action of the Post-Office Department respecting foreign dead-letters shall be subject to conventional stipulations with the respective foreign administrations. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 308.

Sec. 402. [*Date of orders, entries, contracts, etc., to be indorsed.*] Every order, entry, or memorandum whatever, on which any action is to be based, allowance made, or money paid, and every contract, paper, or obligation made by or with the Post-Office Department, shall have its true date affixed to it; and every paper relating to contracts or allowances filed in the Department shall have the date when it was filed indorsed upon it. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 287.

Sec. 403. [*Form of bonds and contracts.*] All bonds taken and contracts entered into by the Post-Office Department shall be made to and with the United States of America. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 287.

See further PUBLIC CONTRACTS.

Sec. 404. [*Copies of contracts for carrying mail.*] The Postmaster-General shall deliver to the Sixth Auditor, within sixty days after the making of any contract for carrying the mail, a duplicate copy thereof. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 315.
Auditor of post-office department.—Change of designation of sixth auditor. See TREASURY DEPARTMENT.

sections 403 and 3941 *et seq.*, R. S., require executory contracts for carrying the mail to be made in writing signed by the contractor. (1878) 15 Op. Atty.-Gen. 484.

Contract in writing.—This section and

Sec. 405. [*Orders and regulations affecting accounts.*] All orders and regulations of the Postmaster-General which may originate a claim, or in any manner affect the accounts of the postal service, shall be certified to the Sixth Auditor. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 289.

Sec. 406. [*Warrant of Postmaster-General, on quarterly statement of Auditor.*] Upon the certified quarterly statement by the Sixth Auditor of the payments by postmasters on account of the postal service, the Postmaster-General shall issue his warrant to the Treasurer to carry the amount to the credit of the postal revenues and to the debit of the proper appropriations upon the books of the Auditor. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 292.

See further POSTAL SERVICE, vol. 5, p. 780.

Sec. 407. [*Postal revenues, etc., to be paid into Treasury—disposition of receipts.*] The postal revenues and all debts due the Post-Office Department shall, when collected, be paid into the Treasury of the United States under the direction of the Postmaster-General, and the Treasurer, Assistant Treasurer, or designated depository receiving such payment shall give the depositor a duplicate receipt therefor, to be retained by him in his office as a voucher, and shall forward the original to the Auditor of the Treasury for the Post-Office Department, to be placed to the credit of the depositor in audit of his accounts. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 292.

This section was amended to read as above by the Act of Jan. 22, 1894, ch. 17, 28 Stat. L. 28. The amendment consists in the addi-

tion of all words after "duplicate receipt therefor," and the change of the words "duplicate receipts therefor" to "a duplicate receipt therefor." See further POSTAL SERVICE, vol. 5, p. 780.

Sec. 408. [*Deposits, how brought into the Treasury.*] All deposits on account of the postal service shall be brought into the Treasury by warrants of the Postmaster-General, countersigned by the Auditor; and no credit shall be allowed for any deposit until such warrant has been issued. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 292.

[SEC. 1.] [*Payment of salaries of clerks.*] * * * POST-OFFICE DEPARTMENT. * * * *Provided*, That hereafter no payment shall be made as salaries to clerks of class one, two, three, or four in said Department out of appropriations made for other purposes; * * * [18 Stat. L. 367.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1875, ch. 129.

SEC. 2. [*Disbursements for post-route maps — pay-rolls topographer's office — vouchers.*] * * * That the disbursements of the moneys appropriated for the preparation and publication of post-route maps be made by a regular bonded disbursing-officer of the Post-Office Department, according to the laws, rules, and customs as recognized by the accounting-officers of the Treasury Department: *And provided also*, That the pay-rolls of the draughtsmen, clerks, messengers, and other employees of the topographer's office, shall be regularly made out by the chief of the topographer's office, examined and checked by the appointment clerk of the Post-Office Department, and the payments thereof made by a bonded disbursing-officer of the Post-Office Department: *And also provided further*, That all expenditures made by the chief of the topographer's office for the preparation and publication of post-route maps shall be accounted for by vouchers, accompanied by affidavit, and the moneys therefor shall be disbursed by a disbursing-officer of the Post-Office Department; and all of the above disbursements shall be paid out of the appropriation for the preparation and publication of post-route maps. [20 Stat. L. 143.]

This is from the Post-Office Department Appropriation Act of June 17, 1878, ch. 259.

SEC. 4. [*Accounts in Post-Office Department.*] That hereafter the Sixth Auditor shall keep the accounts in his office so as to show the expenditures of the Post-Office Department under each item of appropriation provided by law. [18 Stat. L. 343.]

This is from the Postal Service Appropriation Act of March 3, 1875, ch. 128. See further TREASURY DEPARTMENT.

"The sixth auditor" is now the "auditor for the post-office department." See TREASURY DEPARTMENT.

SEC. 409. [*Investigating and remitting fines, penalties, and forfeitures.*] In all cases of fine, penalty, forfeiture, or disability, or alleged liability for any sum of money by way of damages or otherwise, under any provision of law in relation to the officers, employees, operations, or business of the postal service, the Postmaster-General may prescribe such general rules and modes of proceeding as shall appear to be expedient, for the government of the Sixth Auditor, in ascertaining the fact in each case in which the Auditor shall certify to him that the interests of the Department probably require the exercise of his powers over fines, penalties, forfeitures, and liabilities; and upon the fact being ascertained, the Auditor may, with the written consent of the Postmaster-General, mitigate or remit such fine, penalty, or forfeiture, remove such disability, or compromise, release, or discharge such claim for such sum of money and damages, and on such terms as the Auditor shall deem just and expedient. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 325.

The "fact" to be ascertained. — Where it appeared that a mail contractor was of unsound mind when he executed contracts for carrying the mail over certain routes, and also when he signed the bond of another person who was nominally contractor for carrying the mail over another route, but the real party in interest was the contractor first mentioned; and, by the failure to carry out each of the contracts, damages accrued to the United States, it was held that, in order to the

exercise of the discretionary power conferred by this section upon the postmaster-general to compromise, release, or discharge claims in behalf of the government arising under the postal laws, the "fact" to be ascertained in the case is not the mental condition of the mail contractor, but whether the interests of the post-office department require the exercise of such power. (1880) 16 Op. Atty.-Gen. 484.

Section 396a, R. S., makes it imperative upon the postmaster-general to deduct the price of the trip when not performed, and the

provisions of this section have no application in such a case. (1882) 17 Op. Atty.-Gen. 276. But see (1873) 14 Op. Atty.-Gen. 179.

When a deduction has been ordered under sec. 3962, R. S., by the postmaster-general, and he afterwards becomes satisfied that the order was made under a misapprehension of the facts, it is within his power either to directly rescind the order or to refer the matter to the sixth auditor under the provisions

of this section. (1885) 18 Op. Atty.-Gen. 313.

Under section 3 of the Act of March 3, 1851, it was held that the auditor of the treasury for the post-office department, with the written consent of the postmaster-general, had the power to compromise, release, and discharge a claim for a penalty for the violation of the postal laws. (1871) 13 Op. Atty.-Gen. 540.

Sec. 410. [*Discharge of judgment debtors from imprisonment.*] The Postmaster-General may discharge from imprisonment any person confined in jail on any judgment in a civil case, obtained in behalf of the Department, if it be made to appear that the defendant has no property of any description. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 324.

Sec. 411. [*Subsequent execution on same judgment.*] The release provided for by the preceding section shall not bar a subsequent execution against the property of the defendant on the same judgment. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 324.

Sec. 412. [*Restriction upon employees being interested in contracts.*] No person employed in the Post-Office Department shall become interested in any contract for carrying the mail, or act as agent, with or without compensation, for any contractor or person offering to become a contractor, in any business before the Department; and any person so offending shall be immediately dismissed from office, and shall be liable to pay so much money as would have been realized from said contract, to be recovered in an action of debt, for the use of the Post-Office Department. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 286. See further POSTAL SERVICE, vol. 5, p. 801.

Coal contracts.—This section does not prohibit the postmaster-general from awarding a contract for furnishing coal for his depart-

ment to a firm, it being the lowest bidder, one of the members of which is an officer of that department; but if the contract was one for "carrying the mail" it clearly would be within the general prohibition of that section. (1903) 24 Op. Atty.-Gen. 557.

Sec. 413. [*Reports of Postmaster-General.* See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 931.]

Sec. 414. [*Copies of estimates to be furnished to Secretary of Treasury.* See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 890.]

Sec. 964. [*Interest on balances due Post-Office Department.*] In all suits for balances due to the Post-Office Department, interest thereon shall be recovered, from the time of the default, at the rate of six per centum a year. [R. S.]

Act of July 2, 1836, ch. 270, 5 Stat. L. 82.

POST OFFICES.

See POSTAL SERVICE, vol. 5, p. 780; POST-OFFICE DEPARTMENT, ante, p. 1.

POST ROADS.

See *POSTAL SERVICE*, vol. 5, p. 780.

PRACTICE.

See *JUDICIARY*, vol. 4, p. 195, and consult the *General Index*.

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See *PUBLIC LANDS*.

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[I. PRESIDENTIAL ELECTIONS.]

Sec. 131. [*Time of appointing electors.*] 'Except in case of a presidential election prior to the ordinary period, as specified in sections one hundred and forty-seven to one hundred and forty-nine, inclusive, when the offices of President and Vice-President both become vacant, the electors of President and Vice-President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice-President. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 239;

Act of Jan. 23, 1845, ch. 1, 5 Stat. L. 721.

Sections 131–151 constitute chapter 1 ("Presidential Elections") of title 3 ("The President") of the Revised Statutes.

R. S. secs. 147 to 149 above mentioned are repealed. See infra, p. 17.

"Congress has never undertaken to interfere with the manner of appointing electors,

or, where (according to the now general usage) the mode of appointment prescribed by the law of the state is election by the people, to regulate the conduct of such election, or to punish any fraud in voting for electors; but has left these matters to the control of the states." In re Green, (1890) 134 U. S. 380.

Sec. 132. [*Number of electors.*] The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice-President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 239.

Sec. 133. [*Vacancies in electoral college.*] Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote. [R. S.]

Act of Jan. 23, 1845, ch. 1, 5 Stat. L. 721.

Sec. 134. [*Failure to make a choice on the appointed day.*] Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct. [R. S.]

Act of Jan. 23, 1845, ch. 1, 5 Stat. L. 721.

Sec. 135. [*Meeting of electoral college.*] [*Superseded.*]

This section was as follows:

"Sec. 135. The electors for each State shall meet and give their votes upon the first Wednesday in December in the year in which they are appointed, at such place, in each State, as the legislature of such State shall

direct." Act of March 1, 1792, ch. 8, 1 Stat. L. 239.

It was superseded by the provisions of the Act of Feb. 3, 1887, ch. 90, sec. 1, *post*, p. 17, which fixes the second Monday in January as the day of meeting of the electors.

Sec. 136. [*List of names of electors to be furnished to them.*] [*Repealed.*]

This section was as follows:

"Sec. 136. It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which

they are required, by the preceding section, to meet." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

It was directly repealed by the Act of Feb. 3, 1887, ch. 90, sec. 3, *post*, p. 18.

Sec. 137. [*Manner of voting.*] The electors shall vote for President and Vice-President, respectively, in the manner directed by the Constitution. [R. S.]

Act of March 26, 1804, ch. 50, 2 Stat. L. 295.

Sec. 138. [*Certificates to be made and signed.*] The electors shall make and sign three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President, and the other of the votes for Vice-President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 239; Act of March 26, 1804, ch. 50, 2 Stat. L. 295.

Sec. 139. [*Certificates to be sealed and indorsed.*] The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice-President, are contained therein. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 239; Act of March 26, 1804, ch. 50, 2 Stat. L. 295.

Sec. 140. [*Transmission of the certificates.*] The electors shall dispose of the certificates thus made by them in the following manner:

One. They shall, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and deliver to the President of the Senate, at the seat of Government, before the first Wednesday in January then next ensuing, one of the certificates.

Two. They shall forthwith forward by the post-office to the President of the Senate, at the seat of Government, one other of the certificates.

Three. They shall forthwith cause the other of the certificates to be delivered to the judge of that district in which the electors shall assemble. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 239; Act of March 26, 1804, ch. 50, 2 Stat. L. 295. See further Act of Oct. 19, 1888, ch. 1216, sec. 1, *infra*, p. 20.

Sec. 141. [*When Secretary of State shall send for district judge's list.*] Whenever a certificate of votes from any State has not been received at the seat of Government on the fourth Monday of the month of January in which their meeting shall have been held, the Secretary of State shall send a special messenger to the district judge in whose custody one certificate of the votes from that State has been lodged, and such judge shall forthwith transmit that list to the seat of Government. [R. S.]

This section was amended to read as above by the Act of Oct. 19, 1888, ch. 1216, sec. 2, 25 Stat. L. 613. It originally read as follows:

"SEC. 141. Whenever a certificate of votes from any State has not been received at the seat of Government on the first Wednesday of January indicated by the preceding section, the Secretary of State shall send a special messenger to the district judge in whose custody one certificate of the votes from that State has been lodged, and such judge shall forthwith transmit that list to the seat of Government." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

Missing certificates.—The secretary of state having been notified by the president of the Senate that on the fourth Monday of January he had received by mail packages purporting to contain the electoral votes for President and Vice-President from all the states, and had received similar packages by messenger from all but four states, this section, as amended by the Act of Oct. 19, 1888, made it his duty to send special messengers to the district judges in whose custody one certificate of the votes from the four above states had been lodged. (1893) 20 Op. Atty.-Gen. 521.

Sec. 142. [*Counting the electoral votes in Congress.*] [*Superseded.*]

This section was as follows:

"SEC. 142. Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors, and the certificates, or so many of them as have been received, shall then be opened, the votes counted, and the persons to fill the offices of

President and Vice-President ascertained and declared, agreeable to the Constitution." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

It is superseded by the provisions of the Act of Feb. 3, 1887, ch. 90, *infra*, p. 17, which contains the latest legislation concerning the counting of electoral votes.

Sec. 143. [*Provision for absence of President of the Senate.*] In case there shall be no President of the Senate at the seat of Government on the arrival of the persons intrusted with the certificates of the votes of the electors, then such persons shall deliver such certificates into the office of the Secretary of State, to be safely kept, and delivered over as soon as may be to the President of the Senate. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

Sec. 144. [*Mileage of messengers.*] Each of the persons appointed by the electors to deliver the certificates of votes to the President of the Senate shall be allowed, on the delivery of the list intrusted to him, twenty-five cents for every mile of the estimated distance, by the most usual road, from the place of meeting of the electors to the seat of Government of the United States. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

Sec. 145. [*Forfeiture for messenger's neglect of duty.*] Every person who, having been appointed, pursuant to subdivision one of section one hundred and forty or to section one hundred and forty-one, to deliver the certificates of the votes of the electors to the President of the Senate, and having accepted such appointment, shall neglect to perform the services required from him, shall forfeit the sum of one thousand dollars. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

Secs. 146-150. [Repealed.]

These sections were as follows:

"SEC. 146. [*Vacancy in both offices.*] In case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the President of the Senate, or, if there is none, then the Speaker of the House of Representatives, for the time being, shall act as President until the disability is removed or a President elected." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

"SEC. 147. [*Notification of vacancies to be published.*] Whenever the offices of President and Vice-President both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every State, and shall also cause the same to be published in at least one of the newspapers printed in each State." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

"SEC. 148. [*Requisites of the notification.*] The notification shall specify that electors of a President and Vice-President of the United States shall be appointed or chosen in the several States, as follows:

"First. If there shall be the space of two months yet to ensue between the date of such notification and the first Wednesday in December then next ensuing, such notification shall specify that the electors shall be appointed or chosen within thirty-four days preceding such first Wednesday in December.

"Second. If there shall not be the space of two months between the date of such notification and such first Wednesday in December, and if the term for which the President and

Vice-President last in office were elected will not expire on the third day of March next ensuing, the notification shall specify that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December in the year next ensuing. But if there shall not be the space of two months between the date of such notification and the first Wednesday in December then next ensuing, and if the term for which the President and Vice-President last in office were elected will expire on the third day of March next ensuing, the notification shall not specify that electors are to be appointed or chosen." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

"SEC. 149. [*Time of holding election to fill vacancy.*] Electors appointed or chosen upon the notification prescribed by the preceding section shall meet and give their votes upon the first Wednesday of December specified in the notification." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

"SEC. 150. [*Regulations for quadrennial election made applicable to election to fill vacancies.*] The provisions of this Title, relating to the quadrennial election of President and Vice-President, shall apply with respect to any election to fill vacancies in the offices of President and Vice-President, held upon a notification given when both offices become vacant." Act of March 1, 1792, ch. 8, 1 Stat. L. 240.

They are directly repealed by section 3 of the Act of Jan. 19, 1886, ch. 4, which is given *infra*, p. 21.

Sec. 151. [*Resignation or refusal of office.*] The only evidence of a refusal to accept, or of a resignation of the office of President or Vice-President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State. [*R. S.*]

Act of March 1, 1792, ch. 8, 1 Stat. L. 241.

An act to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon.

[*Act of Feb. 3, 1887, ch. 90, 24 Stat. L. 373.*]

[SEC. 1.] [*Meeting of Presidential electors.*] That the electors of each State shall meet and give their votes on the second Monday in January next following their appointment, at such place in each State as the legislature of such State shall direct. [*24 Stat. L. 373.*]

Conflicting provision of state law.—A state law providing for the election of presidential electors, which contains a provision fixing a date for the meeting of the electors

in conflict with the Act of Congress, is not wholly void, but such conflicting provision must give way. *McPherson v. Blacker*, (1892) 146 U. S. 40.

SEC. 2. [*Determination of controversy as to appointment of electors.*] That if any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State,

by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to the said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned. [24 Stat. L. 373.]

SEC. 3. [*Certificate of electors by State executive — certificate of determination of controversy — copies sent to Congress.*] That it shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of electors in such State, by the final ascertainment under and in pursuance of the laws of such State providing for such ascertainment, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by the preceding section to meet, the same certificate, in triplicate, under the seal of the State; and such certificate shall be inclosed and transmitted by the electors at the same time and in the same manner as is provided by law for transmitting by such electors to the seat of Government the lists of all persons voted for as President and of all persons voted for as Vice-President; and section one hundred and thirty-six of the Revised Statutes is hereby repealed; and if there shall have been any final determination in a State of a controversy or contest as provided for in section two of this act, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such determination, in form and manner as the same shall have been made; and the Secretary of State of the United States, as soon as practicable after the receipt at the State Department of each of the certificates hereinbefore directed to be transmitted to the Secretary of State, shall publish, in such public newspaper as he shall designate, such certificates in full; and at the first meeting of Congress thereafter he shall transmit to the two Houses of Congress copies in full of each and every such certificate so received theretofore at the State Department. [24 Stat. L. 373.]

R. S. sec. 136, the repeal of which is above provided for, is given in the notes, *supra*, p. 15.

SEC. 4. [*Counting electoral votes in Congress.*] That Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of one o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes

as they shall appear from the said certificates; and the votes having been ascertained and counted in the manner and according to the rules in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section three of this act from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section two of this act to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section two of this act, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the Executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of. [24 Stat. L. 373.]

SEC. 5. [*Preservation of order.*] That while the two Houses shall be in meeting as provided in this act the President of the Senate shall have power

to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw. [24 Stat. L. 374.]

SEC. 6. [*Limit of debate in each House.*] That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate. [24 Stat. L. 375.]

SEC. 7. [*Arrangements for joint meeting — not to dissolve until result declared.*] That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of ten o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House. [24 Stat. L. 375.]

An act supplementary to the act approved February third, eighteen hundred and eighty-seven, entitled "An act to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon."

[Act of Oct. 19, 1888, ch. 1216, 25 Stat. L. 613.]

[SEC. 1.] [*Transmission of certificates and lists of votes.*] That the certificates and lists of votes for President and Vice-President of the United States, mentioned in chapter one of title three of the Revised Statutes of the United States, and in the act to which this is a supplement, shall be forwarded, in the manner therein provided, to the President of the Senate forthwith after the second Monday in January, on which the electors shall give their votes. [25 Stat. L. 613.]

Chapter 1 of title 3 of the Revised Statutes above mentioned comprises sections 131 to 151. "The Act to which this is a supplement" immediately precedes this.

SEC. 2. [*Amends R. S. sec. 141.* See p. 16.]

An act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice-President.

[Act of Jan. 19, 1888, ch. 4, 24 Stat. L. 1.]

[SEC. 1.] [*In case of death, etc., of President and Vice-President, who to act as President — Congress to be convened.*] That in case of removal, death,

resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting. [24 Stat. L. 1.]

SEC. 2. [*Eligibility of officers.*] That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively. [24 Stat. L. 2.]

SEC. 3. [*Repeal of R. S. secs. 146-150.*] That sections one hundred and forty-six, one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, and one hundred and fifty of the Revised Statutes are hereby repealed. [24 Stat. L. 2.]

The repealed sections above mentioned are set out in the notes, *supra*, p. 17.

[II. OFFICE AND COMPENSATION OF THE PRESIDENT.]

Sec. 152. [*Commencement of term of office.*] The term of four years for which a President and Vice-President shall be elected, shall, in all cases, commence on the fourth day of March next succeeding the day on which the votes of the electors have been given. [R. S.]

Act of March 1, 1792, ch. 8, 1 Stat. L. 241. dent") of title 3 of the Revised Statutes
Sections 152-157 constitute chapter 2 ("The President").
("Office and Compensation of the Presi-

Sec. 153. [*President's salary.*] The President shall receive in full for his services during the term for which he shall have been elected the sum of fifty thousand dollars a year, to be paid monthly, and shall be entitled to the use of the furniture and other effects belonging to the United States and kept in the Executive Mansion. [R. S.]

Act of Sept. 24, 1789, ch. 19, 1 Stat. L. 72; Act of Feb. 18, 1793, ch. 9, 1 Stat. L. 318;
Act of March 3, 1873, ch. 226, 17 Stat. L. 486.

Sec. 154. [*Vice-President's salary.*] The Vice-President shall receive in full for his services during the term for which he shall have been elected the sum of ten thousand dollars a year, to be paid monthly. [*R. S.*]

Act of March 3, 1873, ch. 226, 17 Stat. L. 486.

The Act of Jan. 20, 1874, ch. 11 (see CONGRESS, vol. 2, p. 216), by repealing the Act of March 3, 1873, ch. 226, sec. 1, in so far as

it increased the compensation of public officers, and restoring the former compensation, reduced the salary of the vice-president to \$8,000.

Sec. 155. [*Officers of the President's household.*] The President is authorized to appoint or employ in his official household the following officers:

One private secretary, at a salary of three thousand five hundred dollars a year.

One assistant secretary, who shall be a short-hand writer, at a salary of two thousand five hundred dollars a year.

Two executive clerks, at a salary of two thousand three hundred dollars a year each.

One steward of the President's household, at a salary of two thousand dollars a year.

One messenger, at a salary of one thousand two hundred dollars a year. [*R. S.*]

Act of March 3, 1857, ch. 108, 11 Stat. L. 228; Act of July 23, 1866, ch. 208, 14 Stat. L. 206; Act of July 20, 1868, ch. 176, 15 Stat. L. 96.

The number as well as the designation and compensation of the officers of the President's household has been changed by the various appropriation acts. The provisions of the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 594, are as follows:

"EXECUTIVE. * * * For compensation to the following in the office of the President of the United States: Secretary, five thousand dollars; two assistant secretaries, at three thousand dollars each; executive clerk,

two thousand two hundred dollars; executive clerk and disbursing officer, two thousand dollars; two clerks, at two thousand dollars each; six clerks of class four; one clerk of class four who shall be a telegrapher; two clerks of class three; steward, one thousand eight hundred dollars; usher to the President, one thousand eight hundred dollars; chief doorkeeper, one thousand eight hundred dollars; four doorkeepers, at one thousand two hundred dollars each; four messengers, at one thousand two hundred dollars each; three messengers, at nine hundred dollars each; watchman, nine hundred dollars; one fireman; laborer, seven hundred and twenty dollars. * * * [32 Stat. L. 132.]

Sec. 156. [*Duties of the steward.*] The steward of the President's household shall, under the direction of the President, have the charge and custody of and be responsible for the plate, furniture, and other public property in the President's mansion, and shall discharge such other duties as the President may assign him. [*R. S.*]

Act of March 3, 1857, ch. 108, 11 Stat. L. 228; Act of July 23, 1866, ch. 208, 14 Stat. L. 206.

Sec. 157. [*The steward's bond.*] The steward of the President's household shall, before entering upon the duties of his office, give a bond to the United States for the faithful discharge of his trust. Such bond must be in such sum as the Secretary of the Interior shall deem sufficient, and must be approved by him. [*R. S.*]

Act of July 23, 1866, ch. 208, 14 Stat. L. 206.

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PRISONS AND PRISONERS.

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- Indictment, Information, Arrest, Removal, and Trial of Prisoners*, see **CRIMES AND OFFENSES**, vol. 2, p. 319.
- Bail*, see **BAIL AND RECOGNIZANCES**, vol. 1, p. 519.
- Escape of Prisoners*, see **ESCAPE**, vol. 2, p. 874; **ARTICLES OF WAR**, vol. 1, p. 496; **ARTICLES FOR THE GOVERNMENT OF THE NAVY**, vol. 1, p. 464.
- Prisons and Prisoners in Foreign Countries*, see **DIPLOMATIC AND CONSULAR OFFICERS**, vol. 2, pp. 827, 828, 831.
- Imprisonment for Debt*, see **EXECUTION**, vol. 3, pp. 44-51.
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- Removal of Prisoners in Cases of Epidemic, etc.*, see **HEALTH AND QUARANTINE**, vol. 3, p. 217.
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- Taking of Appeal by Prisoner*, see **JUDICIARY**, vol. 4, p. 622.
- Jail in Yellowstone Park*, see **PUBLIC PARKS**.
- Transfer of Federal Prisons to States*, see **STATES**.
- Military Prisons*, see **WAR DEPARTMENT AND MILITARY ESTABLISHMENT**.
- Foreign Prisons*, see **DIPLOMATIC AND CONSULAR OFFICERS**, vol. 2, p. 775.
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An act for the erection of United States prisons and for the imprisonment of United States prisoners, and for other purposes.

[Act of March 3, 1891, ch. 529, 26 Stat. L. 839.]

[SEC. 1.] [United States prisons — location and erection.] That the Attorney General and Secretary of the Interior be, and are hereby, authorized

and directed to purchase three sites, two of which shall be located as follows: one north, the other south of the thirty-ninth degree of north latitude and east of the Rocky Mountains, the third site to be located west of the Rocky Mountains, and the same to be located geographically as to be most easy of access to the different portions of the country, and cause to be erected thereon suitable buildings for the confinement of all persons convicted of any crime whose term of imprisonment is one year or more at hard labor by any court of the United States in any State, Territory, or District under the jurisdiction of the Department of Justice of the United States, and the plans, specifications, and estimates of such sites and buildings shall be previously made and approved according to law, and shall not exceed the sum of five hundred thousand dollars each. [26 Stat. L. 839.]

Power of Congress to erect, etc., prisons. — Congress can cause a prison to be erected at any place within the jurisdiction of the United States and direct that all persons sentenced to imprisonment under the laws of the United States shall be confined there; or it may arrange with a single state for the

use of its prisons, and require the courts of the United States to execute their sentences of imprisonment in them. All this is left to the discretion of the legislative department of the government, and is beyond the control of the courts. *Ex p. Karstendick*, (1876) 93 U. S. 396.

SEC. 2. [Employment of convicts.] That the sum of one hundred thousand dollars is further appropriated, to be expended under the direction of the Attorney General, in the fitting of workshops for the employment of the prisoners; *Provided, however*, That the convicts be employed exclusively in the manufacture of such supplies for the Government as can be manufactured without the use of machinery, and the prisoners shall not be worked outside the prison enclosure. [26 Stat. L. 839.]

SEC. 3. [Locality of prison, how selected.] That the Attorney General and the Secretary of the Interior be, and are hereby, authorized to select the State, District, or Territory in which to locate and erect the prisons: *Provided*, That the consent of the authorities of such State, District, or Territory be first obtained. [26 Stat. L. 839.]

SEC. 4. [Control and management — officers — regulations.] That the control and management of said prisons be vested in the Attorney-General, who shall have power to appoint a superintendent, assistant superintendent, warden, keeper, and all other officers necessary for the safe-keeping, care, protection, and discipline of such United States prisoners. He shall also have authority to promulgate such rules for the government of the officials of said prisons and prisoners as he may deem proper and necessary. [26 Stat. L. 839.]

SEC. 5. [Transportation of prisoners — expenses.] That the transportation of all United States prisoners convicted of crimes against the laws of the United States in any State, District or Territory, and sentenced to terms of imprisonment in a penitentiary, and their delivery to the superintendent, warden, or keeper of such United States prisons, shall be by the marshal of the District or Territory where such conviction may occur, after the erection and completion of said prisons. That the actual expenses of such marshal, including transportation and subsistence, hire, transportation and subsistence of guards, and the transportation and subsistence of the convict or convicts, be paid, on the approval of the Attorney General out of the judiciary fund. [26 Stat. L. 839.]

Expenses in transporting prisoners. — See further Act of May 28, 1896, ch. 252, sec. 12, title JUDICIAL OFFICERS, vol. 4, p. 145. See also R. S. sec. 5536, *post*, p. 33.

Prisoners sentenced by courts-martial. — This provision, said Attorney-General Harmon, applies "only to prisoners convicted by the civil courts of the United States, and

does not apply to prisoners sentenced by courts-martial." (1895) 21 Op. Atty.-Gen. 204.

"A prisoner sentenced by a court-martial to confinement in a penitentiary of the United

States should not be turned over to a marshal, but should be conducted to the prison by the proper officer of the department of war." (1895) 21 Op. Atty.-Gen. 204.

SEC. 6. [*Transportation, clothing, etc., of discharged prisoner.*] That every prisoner when discharged from the jail and prison shall be furnished with transportation to the place of his residence within the United States at the time of his commitment under sentence of the court, and if the term of his imprisonment shall have been for one year or more, he shall also be furnished with suitable clothing, the cost not to exceed twelve dollars, and five dollars in money. [26 Stat. L. 840.]

SEC. 7. [*Minors may be committed to reformatories.*] That this act shall not apply to minors, who, in the judgment of the judges presiding over United States courts, should be committed to reformatory institutions. *And provided*, That nothing in this act shall be construed as prohibiting the courts of the United States from sentencing to or confining prisoners, either civil or military, in the United States military prison at Fort Leavenworth, Kansas. [26 Stat. L. 840.]

Juvenile offenders.—See R. S. secs. 5549, 5550, *infra*, p. 46.

Military prison at Fort Leavenworth.—

See further provisions Act of March 2, 1895, ch. 189, sec. 1, *post*, p. 27; Act of June 10, 1896, ch. 400, *post*, p. 28.

SEC. 8. [*Commutation for good behavior.*] That the said Attorney General, in formulating rules and regulations for the conduct of said prisons, is hereby authorized to establish rules for commutation for good behavior of said convicts, but not for a longer time than two months for the first year's imprisonment, and two months for each succeeding year. [26 Stat. L. 840.]

Commutation for good behavior, see further Acts of March 3, 1875, ch. 145, *post*, p. 39, and June 21, 1902, ch. 1140, *post*, p. 40.

Effect of delivery of prisoner to prison not named in sentence.—A marshal is bound to deliver a prisoner to the prison to which he is sentenced by the court, and where he unlawfully and without warrant of law surrenders the prisoner to a custody other than that of the warden of the penitentiary named in the sentence, such wrongful conduct on the part of the officer will not suspend the operation of the sentence and prevent it from expiring by lapse of time. So far as the prisoner is concerned his rights are unaffected by the illegal act of the officer, and the case must be treated precisely as if the marshal had discharged his duty according to law by

committing the prisoner to the proper custody. It matters not that during a portion of the time during which the prisoner has been confined he has been held ostensibly for an offense other than that for which he was originally convicted. In the eye of the law he has all the time been serving out the sentence that was first imposed on him, because no ministerial officer by disobeying the mandate of the court and unlawfully surrendering him into another custody than that where he rightfully belonged could suspend the running of the sentence for that offense. The prisoner's term of imprisonment should be computed from the date of the first sentence, and commutation for good behavior should be allowed. *In re Jennings*, (1902) 118 Fed. Rep. 479.

SEC. 9. [*Designation of prison by Attorney-General—separation of juvenile offenders.*] That the Attorney-General shall be authorized to designate to which of said prisons persons convicted in such States or Territories shall be carried for confinement: *Provided*, That in the construction of the prison buildings provided for in this act there shall be such arrangement of cells and yard space as that prisoners under twenty years of age shall not be in any way associated with prisoners above that age, and the management of the class under twenty years of age shall be as far as possible reformatory. [26 Stat. L. 840.]

[*Penitentiary building at Wallawalla, Washington.*] * * * Penitentiary building, Washington: To carry into effect section fifteen of an act entitled "An act to provide for the division of Dakota into two States and to enable the people of North Dakota and South Dakota, Montana and Washington to form constitutions and State governments and to be admitted into the Union and on an equal footing with the original States, and to make donations of public lands to such States:" For the purchase of grounds and the erection thereon of a penitentiary, in the State of Washington, under the direction and supervision of the Secretary of the Interior, and upon such tract or parcel of land in said State as shall be designated by said Secretary, thirty thousand dollars: *Provided*, That the money hereby appropriated shall be devoted exclusively to the purchase of the necessary grounds and to the erection of a penitentiary in said State; and the penitentiary of the State of Washington is hereby located at or near the city of Wallawalla, Wallawalla County, in said State. * * * [27 Stat. L. 661.]

This is from the Deficiency Appropriation Act of March 3, 1893, ch. 210. The Act referred to in the text is given under the title STATES.

[SEC. 1.] [*Conveyance of Wallawalla penitentiary to State of Washington.*] * * * That the Secretary of the Interior be, and is hereby, authorized to apply the sum of twenty-five thousand four hundred and forty-six dollars and ninety-three cents, being balance remaining unexpended of the appropriation made by the "Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-three, and for prior years, and for other purposes," approved March third, eighteen hundred and ninety-three, for the purchase of a site in the State of Washington and for the erection of a penitentiary thereon, to the construction of a wing to the penitentiary building at Walla Walla, in the State of Washington. That the Secretary of Interior be, and is hereby, authorized to convey the land already purchased under the said Act to the State of Washington and to transfer to the said State of Washington the penitentiary building when completed. * * * [30 Stat. L. 56.]

This is from the Sundry Civil Appropriation Act of June 4, 1897, ch. 2.

[SEC. 1.] [*Military prison, Fort Leavenworth, Kansas, changed to United States penitentiary, and transferred to Department of Justice.*] * * * The Military Prison at Fort Leavenworth, Kansas, including all the buildings, grounds, and other property connected therewith, is hereby transferred from the Department of War to the Department of Justice, to be known as the United States Penitentiary, and to be used for the confinement of persons convicted in the United States courts of crimes against the United States and sentenced to imprisonment in a penitentiary, or convicted by courts-martial of offenses now punishable by confinement in a penitentiary and sentenced to terms of imprisonment of more than one year; and the Attorney-General is hereby directed to transfer to the said United States Penitentiary such persons now undergoing sentences of confinement, imposed by the United States courts, in State prisons and penitentiaries, as can be conveniently accommodated at the same penitentiary: *Provided*, That the said United States Penitentiary shall be carried on in accordance with the provisions of sections

four, five, six, seven, eight, and nine of the Act approved March third, eighteen hundred and ninety-one: *Provided further*, That the Secretary of War is hereby authorized, upon the request of the Attorney-General, to detail an officer of the Army to act temporarily as warden of the said penitentiary, and to continue the military guard on duty thereat for such length of time, not exceeding ninety days, after the close of the current fiscal year, as may be deemed necessary to enable the prisoners and property to be transferred to the care and custody of the officers designated by the Attorney-General to receive and care for the same: *And provided further*, That convicts in said United States Penitentiary shall be employed only in the manufacture of articles and the production of supplies for said penitentiary, and in the manufacture of supplies for the Government, and said convicts shall not be worked outside of Fort Leavenworth Military Reservation. * * * *Provided*, That for the fiscal year eighteen hundred and ninety-seven, and annually thereafter, the Attorney-General shall submit estimates in detail for all expenses of maintaining said penitentiary, including salaries of all necessary officers and employees therefor. * * * [28 Stat. L. 957.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189. But see the following text.

R. S. secs. 1344-1361 provide for military prisons. They are probably superseded by the above section. See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

Effect of provision for prisoners sentenced by courts-martial. — "The provision in this

Act that prisoners sentenced by courts-martial may be confined in the United States penitentiary merely puts such prisoners in charge of the civil authorities, on their delivery at the prison, which must be made by the proper officer of the department to which the sentencing tribunal belonged." (1895) 21 Op. Atty.-Gen. 204.

An Act To establish a site for the erection of a penitentiary on the military reservation at Fort Leavenworth, Kansas, and for other purposes.

[Act of June 10, 1896, ch. 400, 29 Stat. L. 380.]

[SEC. 1.] [*Selection of site for prison at Leavenworth, Kansas, and restoration of military prison to War Department.*] That the Attorney-General is hereby authorized and directed to select on the military reservation at Leavenworth, Kansas, within limits hereinafter described, a site for the erection of a penitentiary and other buildings, wall, and workshops for the employment of United States prisoners, with such improvements as he may direct in connection with the completion of the several buildings; said penitentiary to be of a capacity to accommodate at least one thousand two hundred convicts, and to be situated on said grounds and within the following boundary lines: Beginning at a point at the northwestern intersection of Grant and Logan avenues, thence north seventy-two degrees west more or less, forty-five hundred feet more or less to a stone in the field north of the Government farm barn, thence due west fifteen hundred feet more or less to the north side of Logan Avenue; thence along said avenue and its prolongation to the western boundary of the Military Reservation; thence south along said line to the southwest corner of said reservation, thence east along the south line of said reservation to the pike leading north from the city of Leavenworth to the post of Fort Leavenworth; thence north along said pike to the point of beginning; and that these grounds thus described shall be, and hereby are, set apart from the contiguous military reservation for United States penitentiary purposes, and assigned to and placed under the care and control of the Attorney-General as a United States penitentiary reservation: *Provided*, That when the United States Penitentiary shall be occupied and applied to the purposes contemplated by this

Act, the buildings and grounds within the said Military Reservation of Fort Leavenworth that were transferred from the Department of War to the Department of Justice, in accordance with the provisions of the Act of Congress approved March second, eighteen hundred and ninety-five, shall be restored to the control of the said Department of War: *And provided further*, That this prison reservation shall be open for military tactical purposes, when such purposes do not interfere with the discipline of said prison. [29 Stat. L. 380.]

SEC. 2. [*Plans, etc.*] That the Attorney-General shall employ an architect skilled in the construction of penitentiary buildings, who, with the warden of the existing penitentiary, shall prepare plans, specifications, and estimates, and submit them to the Attorney-General for approval. [29 Stat. L. 380.]

SEC. 3. [*Construction by convicts — use of shops, etc.*] That upon the approval of plans and estimates the Attorney-General is authorized to incur the expense necessary to construct the penitentiary buildings thus approved, and for this purpose shall employ the labor of the convicts in the present United States penitentiary at Fort Leavenworth that can, under proper guards, be used on the necessary stone, brick, and wood work, in the manufacture of lime on the reservation, until the completion of the same, and shall use all the equipments for carrying on the work that are in the possession of the present United States Penitentiary building, including the sawmill and shops equipped for working in iron, stone, brass, and wood, with the use of the animals and wagons there belonging to the United States for hauling material, and other necessary transportation, and said prison shall have the right to quarry stone for prison purposes in any of the quarries on the Fort Leavenworth Reservation: *Provided*, That no expense shall be incurred under this Act until an appropriation is made with which to commence the buildings. [29 Stat. L. 380.]

Hard labor for prisoners. — The laws establishing the prison at Fort Leavenworth would seem to imply that hard labor would be a part of the punishment of prisoners confined there. *In re Welty*, (1903) 123 Fed. Rep. 123.

SEC. 4. [*Limit of cost.*] That the cost of employing an architect and of building said penitentiary, workshops, and improvements shall not, exclusive of the prison labor, exceed the sum of one hundred and fifty thousand dollars, of which no more than fifty thousand dollars, or so much thereof as may be necessary, shall be expended in a fiscal year. [29 Stat. L. 381.]

An Act Declaring the Federal jail at the city of Fort Smith, Arkansas, a national prison for certain purposes.

[Act of May 17, 1898, ch. 340, 30 Stat. L. 417.]

[*Federal jail at Fort Smith declared a national prison — admission to prison.*] That the Federal jail at the city of Fort Smith, Arkansas, in addition to the purposes for which it is now used, is hereby declared to be a national prison, for the confinement of persons convicted of crimes and misdemeanors in the United States courts and commissioners' courts in the Indian Territory, in cases where the term of imprisonment does not exceed one year, admission into said prison to be under such rules and regulations as may be prescribed by the Attorney-General of the United States. And said jail may also be used for the care and confinement of United States prisoners in the Texarkana division of the western district of Arkansas. [30 Stat. L. 417.]

[SEC. 1.] [*United States penitentiary at Atlanta, Ga. — control and management, etc. — employment of convicts.*] * * * United States penitentiary, Atlanta, Georgia: * * * *Provided*, That said United States penitentiary at Atlanta, Georgia, shall be carried on in accordance with sections four, five, eight, and nine of the Act approved March third, eighteen hundred and ninety-one, entitled "An Act for the erection of United States prisons and for the imprisonment of United States prisoners, and for other purposes:" *Provided further*, That the Attorney-General is authorized to transfer, in his discretion, to said United States penitentiary at Atlanta, Georgia, such persons now undergoing sentences of confinement, imposed by the United States courts, in other institutions, as can conveniently be accommodated therein: *Provided further*, That convicts in said United States penitentiary at Atlanta, Georgia, may be employed in the manufacture of articles and the production of supplies for said penitentiary; in the manufacture of supplies for the Government that can be manufactured without the use of machinery; in the construction, extension, and repairs of buildings and inclosures of the prison, and in making necessary materials therefor; and in the cultivation and care of the prison grounds and farm. * * * [31 Stat. L. 1185.]

This is from the Sundry Civil Appropriation Act of March 3, 1901, ch. 853.

Sec. 1828. [*Report of warden of U. S. penitentiary for District of Columbia.*] The warden of the penitentiary of the United States for the District of Columbia shall make to the Secretary of the Interior, annually, in time to accompany the annual message of the President to Congress, a report of his operations during the preceding year, and of the manner in which all appropriations have been applied. [R. S.]

Act of Aug. 4, 1854, ch. 242, 10 Stat. L. 573.

[SEC. 1.] [*Expenses for jail of District of Columbia — estimates.*] * * * That hereafter one-half of all expenses incurred for maintenance of the jail of the District of Columbia and for support of prisoners therein shall be paid out of the revenues of the District of Columbia, and estimates for such expenses shall each year hereafter be submitted in the annual estimates for the expenses of the government of the District of Columbia. * * * [28 Stat. L. 417.]

This is from the Sundry Civil Appropriation Act of Aug. 18, 1894, ch. 301.

Sec. 1892. [*Penitentiaries for Territories — care and control.*] Any penitentiary which has been, or may hereafter be, erected by the United States in an organized Territory shall, when the same is ready for the reception of convicts, be placed under the care and control of the marshal of the United States for the Territory or District in which such penitentiary is situated; except as otherwise provided in the case of the penitentiaries in Montana, Idaho, Wyoming, and Colorado. [R. S.]

Act of Jan. 10, 1871, ch. 15, 16 Stat. L. 398. But see acts following R. S. sec. 1936, *post*, p. 32.

"The duties of the marshal are those of supervision, of hiring guards, feeding and clothing prisoners, and supplying the prison with fuel, lights, and furniture, and paying for the same, and it is impossible to make a

distinction between these classes of services. Payment is a necessary incident to hiring and purchasing, and one is as much a service under the regulations for the government of the penitentiary as the other." U. S. v. Baird, (1893) 150 U. S. 54.

Care of penitentiary at Boise, Idaho. — This section is amended by the Act of June 20,

1874, 18 Stat. L. 112, putting the penitentiary at Boise, Idaho, under the care and control of the marshal of the territory, independent of any direction from the attorney-general. *Ex p. Hibbs*, (1886) 26 Fed. Rep. 426.

Custodian of penitentiary in Utah.—In *Nelson v. Clayton*, 2 Utah 302, it was held that the marshal is the proper custodian and warden of the penitentiary of the territory of Utah.

Sec. 1893. [*Rules for their government.*] The Attorney-General of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and of his deputies for their services under such regulations shall be fixed by the Attorney-General. [*R. S.*]

Act of Jan. 10, 1871, ch. 15, 16 Stat. L. 398. The attorney-general is the only "director" of a territorial penitentiary. *Nelson v. Clayton*, 2 Utah 302.

Territorial provisions for supervision.—This Act supersedes and renders nugatory any law of a territory which gives the supervisory power over a territorial penitentiary to any man or set of men. *Nelson v. Clayton*, 2 Utah 302.

Foreign government taking testimony of federal prisoners.—"The power of the executive to extend to the German government the privilege of taking the testimony of prisoners confined in federal and state prisons, without exercising the treaty-making power, * * * can only be so extended as to prisoners confined in federal prisons in such of the terri-

tories as are not invested by law with authority to regulate the prisons within their limits, * * * these being the only prisons under federal control; and then only * * * with the concurrence of the attorney-general, who is specially charged by law with the duty of making rules and regulations for the government of said prisons." (1883) 17 Op. Atty.-Gen. 565.

Marshal's commissions on disbursements.—Where a salary is fixed by the attorney-general as "the reasonable compensation of the marshal" for his services as keeper or warden of a territorial penitentiary, he may not be allowed commissions on disbursements for the support of the penitentiary. *U. S. v. Baird*, (1893) 150 U. S. 54, reversing 29 Ct. Cl. 551.

Sec. 1894. [*Payment of marshal, etc., and of expenses of subsistence, etc., of offenders.*] The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of, the fund for defraying the expenses of suits in which the United States are concerned, and of prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers. [*R. S.*]

Act of Jan. 10, 1871, ch. 15, 16 Stat. L. 398.

Sec. 1895. [*Imprisonment in penitentiaries.*] Any person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States. [*R. S.*]

Act of Jan. 10, 1871, ch. 15, 16 Stat. L. 398. But see following text.

The word "may" in this statute means "shall." *Territory v. Nelson*, 2 Wyo. 355.

Confinement of prisoner awaiting grand jury.—A marshal of a territory (Utah) can hold in custody a prisoner to answer to the grand jury for a crime under the laws of the territory, and in default of bail he can confine such prisoner in a territorial penitentiary. *Matter of Nelson*, (1893) 9 Utah 366.

Prisoners sentenced in Wyoming.—The penitentiary at Laramie, Wyoming, having been erected by Congress is the only penitentiary for the confinement of prisoners sentenced by the district courts of the territory for offenses against the territorial laws, where the territorial statutes provide that the punishment therefor shall be confinement in the penitentiary. *Territory v. Nelson*, 2 Wyo. 355.

[*Care and custody of convicts of Territories.*] * * * That the legislative assemblies of the several Territories of the United States may make such provision for the care and custody of such persons as may be convicted of crime under the laws of such Territory as they shall deem proper, and for that purpose may authorize and contract for the care and custody of such convicts in any other Territory or State, and provide that such person or persons may be sentenced to confinement accordingly in such other Territory or State, and all existing legislative enactments of any of the Territories for that purpose are hereby legalized: *Provided*, That the expense of keeping such prisoners shall be borne by the respective Territories, and no part thereof shall be borne by the United States. * * * [21 Stat. L. 277.]

This is from the Sundry Civil Appropriation Act of June 16, 1880, ch. 235.

Sentence to prison claimed to be without territory. — There is no law requiring prisoners convicted and sentenced to imprisonment by the courts of the territory (Arizona) to be confined within the territory; and the fact that a territorial prison is claimed to be without the territory and within the limits

of an adjoining state will not constitute imprisonment therein, under sentence of the territorial court, illegal, especially where the territory is in possession of the prison and exercises authority over it and has no other territorial prison, and where it is not alleged that the state has ever made any claim whatever to the land upon which the prison stands. *In re Wilson*, (1896) 72 Fed. Rep. 656.

Sec. 1936. [*Control of penitentiaries in Montana, Idaho, etc., transferred to said Territories.*] The care and custody of the penitentiaries in Montana, Idaho, Wyoming, and Colorado, and the personal property thereunto belonging, and the use and occupation thereof, are transferred to such Territories, respectively, until otherwise ordered by the Attorney-General; but the legal title to such penitentiaries and the property shall continue to vest in the United States. [R. S.]

Act of Jan. 24, 1873, ch. 63, 17 Stat. L. 418.

But see the following acts. The provisions

as to Montana, Idaho, and Wyoming appear to be repealed by Act of June 20, 1874, ch. 332, set out below.

An Act transferring the Control of certain territorial Penitentiaries to the several Territories in which the same are Located.

[Act of Jan. 24, 1873, ch. 63, 17 Stat. L. 418.]

[Sec. 1.] [*Penitentiaries in Montana, Idaho, Wyoming, and Colorado.*] That so much of the act entitled "An act in relation to certain territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one, placing the penitentiaries in the Territories of Montana, Idaho, Wyoming, and Colorado, under the care and control of the respective United States marshals for said Territories, is hereby repealed, and the care and custody of said penitentiaries, and the personal property thereunto belonging, and the use and occupation thereof, are hereby transferred to said Territories respectively, until otherwise ordered by the Attorney-General: *Provided*, That the legal title to said penitentiaries and property shall continue to vest in the United States: *And provided further*, That said Territories shall keep and maintain, in the penitentiaries hereby transferred to their custody and control, all persons convicted in said respective Territories of violations of the laws of the United States, and sentenced to imprisonment therefor, and all persons held to answer for alleged violations of the laws of the United States in said respective Territories, at the rate and price, to be paid by the United States out of the judiciary fund, of one dollar per day for each person so imprisoned. [17 Stat. L. 418.]

The Act of Jan. 10, 1871, ch. 15, mentioned in the above section, is incorporated in the Revised Statutes as R. S. secs. 1892-1895. See repeal of this Act in part by following Act.

SEC. 2. [*Transfer to Territorial authorities.*] That immediately after the passage of this act the Attorney-General of the United States shall cause to be transferred to the proper authorities of the Territories of Montana, Idaho, Wyoming, and Colorado, the penitentiaries and personal property connected therewith, situated in each of said Territories, respectively. [17 Stat. L. 419.]

An act to amend the act entitled ["an act transferring the control of certain Territorial penitentiaries to the several Territories in which the same are located," approved January twenty-fourth, eighteen hundred and seventy-three.

[Act of June 20, 1874, ch. 332, 18 Stat. L. 112.]

[SEC. 1.] [*Penitentiaries in Montana, Idaho, and Wyoming Territories.*] That the act entitled "An act transferring the control of certain Territorial penitentiaries to the several Territories in which the same are located," approved January twenty-fourth, eighteen hundred and seventy-three, be, and the same is hereby, amended by striking out the words Montana, Idaho, and Wyoming wherever the same occur in said act, and the said act shall hereafter have no applicability to the Territories of Montana, Idaho, and Wyoming. [18 Stat. L. 112.]

SEC. 2. [*To continue under control of United States marshals.*] That the penitentiaries in the Territories of Montana, Idaho, and Wyoming, shall continue under the care and control of the marshal of the United States for said Territories, under and pursuant to the provisions of the act entitled "An act in relation to certain territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one; which said last mentioned act is hereby revived and reenacted so far as the same applies to the Territories of Montana, Idaho, and Wyoming. [18 Stat. L. 112.]

The Act of Jan. 10, 1871, ch. 15, mentioned in the text, was incorporated in R. S. as secs. 1892-1895. Section 1 is the same as R. S. sec. 1892, with the exception of the

provision as to the territories of Montana, Idaho, Wyoming, and Colorado. Section 2 is the same as R. S. secs. 1893, 1894. Section 3 is the same as R. S. sec. 1895.

Sec. 1937. [*Expenses of maintenance of prisoners to be paid from judiciary fund.*] The Territories named in the preceding section shall keep and maintain, in the penitentiaries transferred to their custody and control, all persons convicted in such Territories of violations of the laws of the United States, and sentenced to imprisonment therefor, and all persons held to answer for alleged violations of the laws of the United States in such Territories, at the rate and price, to be paid by the United States out of the judiciary fund, of one dollar per day for each person so imprisoned. [R. S.]

Act of Jan. 24, 1873, ch. 63, 17 Stat. L. 419.

Sec. 5536. [*Expenses for U. S. prisoners to be paid by the United States.*] All the expenses attendant upon the transportation from place to place, and upon the temporary or permanent confinement of persons arrested or committed under the laws of the United States, as well as upon the execution of any sentence of a court thereof respecting them, shall be paid out of the Treasury of the United States in the manner provided by law. [R. S.]

Res. No. 2 of March 3, 1821, 3 Stat. L. 646; Act of March 3, 1835, ch. 40, 4 Stat. L. 777; Act of March 3, 1865, ch. 86, 13 Stat. L. 500. See further Act of March 3, 1891, ch. 529, sec. 5, *supra*, p. 25.

Sections 5536-5559 constitute chapter 9

("Prisoners and Their Treatment") of title 70 ("Crimes") of the Revised Statutes.

The United States may use state prisons for the punishment of federal prisoners, paying the expense and letting the prisoners be employed and treated as the state convicts

are. *U. S. v. Smith*, (1846) 1 Woodb. & M. (U. S.) 184, 27 Fed. Cas. No. 16,346.

What constitutes such expenses.—“What are these expenses? A reasonable, agreed sum for the nourishment and clothing of the prisoner in such prison, for the other means of comfort and health which it affords, as fuel and medical service, and for the custody of the prisoner, which includes the cost of the construction, reparation, occasional improvements, and ordinary wear and tear of the establishment; that is, in a word, *pro tanto* indemnification of the state.” (1857) 8 Op. Atty-Gen. 292.

Expenses of employed prisoners.—The

Sec. 5537. [*Places of confinement.*] In a State where the use of jails, penitentiaries, or other houses is not allowed for the imprisonment of persons arrested or committed under the authority of the United States, any marshal in such State, under the direction of the judge of the district, may hire, or otherwise procure, within the limits of such State, a convenient place to serve as a temporary jail. [*R. S.*]

Res. No. 2 of March 3, 1821, 3 Stat. L. 646; Act of March 2, 1833, ch. 57, 4 Stat. L. 634.

Confinement of federal prisoners generally.—“The federal government has no regular places of imprisonment of its own, either of the class denominated jails, or of that denominated penitentiaries, within any of the states. In general, each of the respective states had acceded to the suggestion of the first Congress, and had made provision to receive in its places of confinement, general or special, the prisoners of the United States, making for such prisoners the same regulations as for their own in the matter of discipline, subsistence, and other necessities of life. The federal courts may, if they please, send their penitentiary convicts to the District of Columbia; but as to prisoners, of whatever class, confined in special or preliminary process, or convicts not sentenced to hard labor, the federal courts must depend on the prisons of the state within whose limits the incident occurs, or, in case of refusal there, make order for some other suitable, special place of confinement, at the direct charge of the United States.” (1857) 8 Op. Atty-Gen. 291.

Implied consent of state.—The state would have the right to refuse the use of its penitentiary to the prisoners of the United States, but where for more than thirty years prisoners convicted in the courts of the United States have been sentenced to the penitentiary, and have been there received and kept, with the knowledge and acquiescence of the

United States, not possessing any places of imprisonment within the states, are admitted by each state into its prisons on conditions agreed for the indemnification of the state; and, although the state so employ a federal convict as to derive returns from his labor, still it may demand compensation for entertaining him in its penitentiary, to be paid by the United States. (1857) 8 Op. Atty-Gen. 289.

To whom payable.—The compensation in such case is due to the state as such, but is payable to any lawfully appointed agent of the state. (1857) 8 Op. Atty-Gen. 289.

state authorities, and their expenses paid by the United States, it is not competent for an offender sentenced to the penitentiary by the federal court to object that there is no express legislation by the state authorizing such prisoners to be there confined; such objection could only be made by the state. *Ex p. Geary*, (1871) 2 Biss. (U. S.) 485, 10 Fed. Cas. No. 5,293.

Lawful detention.—So long as the state permits him to remain in its prison as the prisoner of the United States, and does not object to his detention by its officers, he is rightfully detained in custody under a sentence lawfully passed. *Ex p. Karstendick*, (1876) 93 U. S. 396.

Necessity of process of commitment.—In cases under this section no special process of commitment is necessary, the prisoners being already in the custody of the marshal, and their detention being still continued in his custody. *Erwin v. U. S.*, (1889) 37 Fed. Rep. 470; *Turner v. U. S.*, (1884) 19 Ct. Cl. 629.

Special provision by courts.—District courts of the United States have power to provide specially for the confinement of persons convicted by federal law if refused admission into the jails of the state. (1856) 7 Op. Atty-Gen. 615.

Confinement in penitentiary of District of Columbia.—In a case arising under this section the prisoner may be confined in the penitentiary of the District of Columbia. (1856) 7 Op. Atty-Gen. 615.

Sec. 5538. [*Marshal to make provision for safe-keeping of prisoners.*] The marshal shall make such other provision as he may deem expedient and necessary for the safe-keeping of the prisoners arrested or committed under the authority of the United States, until permanent provision for that purpose is made by law. [*R. S.*]

Res. No. 2 of March 3, 1821, 3 Stat. L. 646; Act of March 2, 1833, ch. 57, 4 Stat. L. 634.

Power of Congress to legislate for arrest and safe-keeping.—Congress has the right to enact laws for the arrest and commitment

of those accused of any crime or offense against the United States, whether committed within one of the states of the Union or within territory over which Congress has plenary and exclusive jurisdiction, and for holding them in safe custody until indictment and trial; and persons arrested and held pursuant to such laws are in the exclusive custody of the United States. *Logan v. U. S.*, (1892) 144 U. S. 263.

Protection of prisoners from injury.—“The United States having the absolute right to hold such prisoners have an equal duty to protect them, while so held, against assault or injury from any quarter. The existence of that duty on the part of the government necessarily implies a corresponding right of the prisoners to be so protected; and this right of the prisoners is a right secured to them by the Constitution and laws of the United States.” *Logan v. U. S.*, (1892) 144 U. S. 263.

Delivery of prisoners to incompetent deputies.—A United States marshal owes a duty to prisoners to keep them safely and protect them from unlawful injury, and where he

has taken prisoners into his custody, permitted them to be disarmed and shackled, and knowingly delivered them over to incompetent deputies and to the known hostility of mobs, he is liable for a neglect of his duty as his own personal negligence and default; and in states in which recovery may be had when the death of any person is caused by the wrongful act of another an action may be maintained on the marshal's bond for the death of prisoners so delivered to such incompetent deputies. *Asher v. Cabell*, (C. C. A. 1892) 50 Fed. Rep. 818.

Examination of state jails by marshal.—A marshal is not keeper of the jails of the state; “he has no control over them; he neither repairs the jails nor feeds the prisoners nor regulates their police;” and in the absence of an order of the court requiring him to make an examination of state jails to ascertain if they are proper for the confinement of United States prisoners he is not entitled to charge for so doing. *U. S. v. Smith*, (1846) 1 Woodb. & M. (U. S.) 184, 27 Fed. Cas. No. 16,348.

Sec. 5539. [*United States convicts in State penitentiaries.*] Whenever any criminal, convicted of any offense against the United States, is imprisoned in the jail or penitentiary of any State or Territory, such criminal shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which such jail or penitentiary is situated; and while so confined therein shall be exclusively under the control of the officers having charge of the same, under the laws of such State or Territory. [R. S.]

Act of June 30, 1834, ch. 163, 4 Stat. L. 739.

Construed with other sections.—This section being in *pari materia* with the sections immediately following is to be construed with those sections. *Ex p. Karstendick*, (1876) 93 U. S. 396.

Jailer of state jail.—“The United States uses the jails of the state for the confinement of prisoners under sentence or awaiting trial. But the jailer is not an officer of the United States, and the commissioner has no power to call upon him to perform any service.” *Saunders v. U. S.*, (1896) 73 Fed. Rep. 782.

Control of marshal.—The state jails are not under the control of the marshal, nor is the custody of the jailer the custody of the marshal in such cases. *Erwin v. U. S.*, (1889) 37 Fed. Rep. 470; *Randolph v. Donaldson*, (1815) 9 Cranch (U. S.) 76.

Hard labor for federal prisoners in Illinois.—As by the laws of Illinois the prisoners in the state penitentiary are subject to hard labor, unless it is otherwise directed in their sentence, and as it is provided that criminals sentenced by the United States court shall

be subject to the same discipline and treatment as convicts sentenced by the state courts, it follows, as a conclusion of law, that the former are subject to hard labor as a part of the imprisonment. It is not necessary, in order to clothe the court with authority to imprison in the penitentiary, that a part of the punishment by the terms of the sentence should be hard labor. *Ex p. Geary*, (1871) 2 Biss. (U. S.) 485, 10 Fed. Cas. No. 5,293.

Taking testimony of prisoners.—“As to prisoners confined in state prisons, whether under sentence of federal or state courts, they are subject exclusively to the government of rules and regulations prescribed by the several states as well in respect of federal as state prisoners; * * * and * * * the executive has no power to give the German government the privilege of access to such prisoners for the purpose [of taking testimony], without the instrumentality of a treaty, supposing the subject to be, to its full extent, within the treaty-making power.” (1883) 17 Op. Atty-Gen. 565.

Sec. 5540. [*Selection of penitentiary where a judicial district is divided.*] Where a judicial district has been or may hereafter be divided, the circuit and district courts of the United States shall have power to sentence any one convicted of an offense punishable by imprisonment at hard labor to the

penitentiary within the State, though it be out of the judicial district in which the conviction is had. [R. S.]

Act of March 28, 1856, ch. 9, 11 Stat. L. 2.

Sec. 5541. [*Sentences to imprisonment for more than a year, where to be executed.*] In every case where any person convicted of any offense against the United States is sentenced to imprisonment for a period longer than one year, the court by which the sentence is passed may order the same to be executed in any State jail or penitentiary within the district or State where such court is held, the use of which jail or penitentiary is allowed, by the legislature of the State for that purpose. [R. S.]

Act of March 3, 1865, ch. 86, 13 Stat. L. 500.

Derivation of section.—This section "is in part and without substantial change a reproduction of the third section of the Act of March 3, 1865, entitled 'An Act regulating proceedings in criminal cases and for other purposes.'" *In re Mills*, (1890) 135 U. S. 263.

"The words 'state jail' in section 5541, and 'state prison' in the Act of 1865, mean the same thing." *In re Mills*, (1890) 135 U. S. 263.

"The term 'state prison' is used in juxtaposition and as synonymous with 'penitentiary,' the meaning of which is definitely established. All understand a penitentiary to be a prison for the compulsory confinement, generally at compulsory labor, of convicts from the criminal courts." *U. S. v. Smith*, (1889) 40 Fed. Rep. 755.

"The term 'state prison' is not used in the general sense of any jail or lock-up of a county or city owned by the state." *U. S. v. Smith*, (1889) 40 Fed. Rep. 755.

Common-law offenses.—This statute does not affect the punishment of common-law offenses. *U. S. v. Marshall*, (1887) 6 Mackey (D. C.) 34.

Sufficient authorization.—"This language is explicit, and taken by itself is certainly sufficient to authorize imprisonment in a penitentiary at the discretion of the court in all cases where the sentence is for a longer term than one year." *Ex p. Karstendick*, (1876) 93 U. S. 396.

The reformatory prison at Sherborn, Massachusetts, for the reformation and punishment of female offenders sentenced to hard labor by the state and the federal courts, is undoubtedly a state penitentiary, within the meaning of this section and R. S. sec. 5542, therefore a sentence of six months without hard labor in that prison is illegal. *In re Johnson*, (1891) 46 Fed. Rep. 481.

Sentence of one year or less.—Under this provision of law a court of the United States has no right to order a person who is sentenced to imprisonment for a period of one year, or less, to be confined in any particular state prison or penitentiary. *Matter of De Puy*, (1869) 3 Ben. (U. S.) 307, 7 Fed. Cas. No. 3,814.

Punishment not exceeding one year by statute.—Under this provision, when a statute prescribes a punishment by confine-

ment not exceeding one year, the convict cannot be confined in any state prison or penitentiary." *U. S. v. Cobb*, (1890) 43 Fed. Rep. 570.

Imprisonment in penitentiary not required by statute.—"Where the statute of the United States prescribing a punishment by imprisonment does not require that the accused shall be confined in the penitentiary, a sentence of imprisonment in the penitentiary cannot be imposed unless the sentence is for a period 'longer' than one year." *Haynes v. U. S.*, (C. C. A. 1900) 101 Fed. Rep. 817.

"The court has no jurisdiction to order an imprisonment, when the place is not specified by law, to be executed in a penitentiary, when the imprisonment is not ordered for a period longer than one year, or at hard labor. The statute is equivalent to a direct denial of any authority on the part of the court to direct that imprisonment be executed in a penitentiary in any cases other than those specified. Whatever discretion, therefore, the court may possess, in prescribing the extent of imprisonment as a punishment for the offense committed, it cannot in specifying the place of imprisonment name one of these institutions." *In re Bonner*, (1894) 151 U. S. 242, *affirming* (1893) 57 Fed. Rep. 184.

"A sentence simply of imprisonment," said the court, "in the case of a person convicted of an offense against the United States, where the statute prescribing the punishment does not require that the accused shall be confined in a penitentiary, cannot be executed by confinement in a penitentiary, except in cases in which the sentence is for a period longer than one year. There is consequently no escape from the conclusion that the judgment of the court, sentencing the petitioner to imprisonment in a penitentiary, in one case for a year and in the other for six months, was in violation of the statutes of the United States. The court below was without jurisdiction to pass any such sentences, and the orders directing the sentences of imprisonment to be executed in a penitentiary are void." *In re Mills*, (1890) 135 U. S. 263, *citing* *Nielson*, Petitioner, (1889) 131 U. S. 176; *In re Coy*, (1888) 127 U. S. 731; *Ex p. Rowland*, (1881) 104 U. S. 604; *Ex p. Virginia*, (1879) 100 U. S. 339; *Ex p. Parks*, (1876) 93 U. S. 18; *Ex p. Lange*, (1873) 18 Wall. (U. S.) 163.

Hard labor prescribed by statute.—"The only case where a person can be sentenced to

a jail or penitentiary not exceeding one year is where the statute prescribes hard labor as part of the punishment and leaves the term of imprisonment in the discretion of the court." U. S. v. Cobb, (1890) 43 Fed. Rep. 570.

Sentence for one year not a nullity.—The sentence for one year to a penitentiary is not a nullity, but is merely irregular as designating a wrong place of imprisonment. *Ex p. Friday*, (1890) 43 Fed. Rep. 916.

Erroneous sentence.—"The sentences of imprisonment in this case," said the court by Judge Caldwell, "not being for a period longer than one year, it was error to order them to be executed by confinement in a penitentiary; and neither of the statutes on which the indictments are founded providing for punishment at hard labor, that part of the sentence is also erroneous." *Haynes v. U. S.*, (C. C. A. 1900) 101 Fed. Rep. 817.

Sec. 5542. [*Penitentiary sentences, where to be executed.*] In every case where any criminal convicted of any offense against the United States is sentenced to imprisonment and confinement to hard labor, it shall be lawful for the court by which the sentence is passed to order the same to be executed in any State jail or penitentiary within the district or State where such court is held, the use of which jail or penitentiary is allowed by the legislature of the State for that purpose. [R. S.]

Act of March 3, 1825, ch. 65, 4 Stat. L. 118.
Discretion of court as to place of imprisonment.—It is within the discretion of the court to order punishment in penitentiaries where hard labor is required as a part of the discipline. *In re Welty*, (1903) 123 Fed. Rep. 123.

Necessity of law providing hard labor.—To justify imprisonment in a penitentiary at hard labor in cases where imprisonment is longer than one year, it is not essential that the law defining the defense in providing for the punishment thereof should include a provision for hard labor. *In re Welty*, (1903) 123 Fed. Rep. 123.

Length of term of imprisonment necessary.—With regard to this section and R. S. sec. 5441 immediately preceding the court said: "It is difficult to see how language could be selected more clearly emphasizing the evident distinction in the minds of the law-makers between imprisonment only and imprisonment at hard labor. In the one case the imprisonment may be in a penitentiary if longer than one year; in the other the imprisonment, whether for six years or six months, may be in a penitentiary or state prison." *Ex p. Friday*, (1890) 43 Fed. Rep. 916.

"Hard labor" by statute.—"With this legislation in full force it is impossible to believe that it was the intention of Congress to confine imprisonment in penitentiaries exclusively to cases in which hard labor is in express terms made by statute a part of the punishment." *Ex p. Karstendick*, (1876) 93 U. S. 396.

Separate sentences on different counts.—Although for some purposes the different counts of an indictment may be regarded as so far separate as to be different indictments, yet a sentence at hard labor for two years in a state prison, on two counts, is not void as being over one year, because it directs punishment for a period that does not exceed one year for each count, when there is no statement in the record to show a separate sentence on each count. *Dimmick v. Tompkins*, (1904) 194 U. S. 541.

Execution of sentence.—When this section authorized the District Court to order the sentences to be executed in any penitentiary within the state, the statute implied that the District Court had the power to direct an officer to execute the order, and the only officer whom it could direct was the marshal for its own district. *U. S. v. McMahon*, (C. C. A. 1895) 65 Fed. Rep. 976.

"Hard labor" included in sentence.—"In cases where the statute makes hard labor a part of the punishment, it is imperative upon the court to include that in its sentence. But where the statute requires imprisonment alone the several provisions * * * place it within the power of the court, at its discretion, to order execution of its sentence at a place where labor is exacted as part of the discipline and treatment of the institution or not, as it pleases." *Ex p. Karstendick*, (1876) 93 U. S. 396.

Expressly including hard labor in sentence otherwise implied.—A sentence of imprisonment to a state penitentiary is not vitiated and rendered void for expressly including the element or feature of hard labor, which would have been otherwise implied in a sentence of simple imprisonment. In this case the prisoner was sentenced to a state penitentiary, the rules, regulations, and discipline of which provided for hard labor. *U. S. v. Pridgeon*, (1894) 153 U. S. 48.

A sentence to a penitentiary in Ohio is a sentence at hard labor, as, by the provisions of the laws of that state, hard labor is provided for all prisoners confined in such penitentiary. *U. S. v. Tod*, (1885) 25 Fed. Rep. 816.

A sentence may be corrected *nunc pro tunc* by the addition by the court of the words "at hard labor." where the omission of these words was a clerical error and the sentence actually imposed was imprisonment at hard labor. *In re Welty*, (1903) 123 Fed. Rep. 123.

Sec. 5543. [*Deductions from term of imprisonment for good conduct.*] All prisoners who have been, or may be, convicted of any offense against the

laws of the United States, and confined in any State jail or penitentiary in execution of the judgment upon such conviction, who so conduct themselves that no charge for misconduct is sustained against them, shall have a deduction of one month in each year made from the term of their sentence, and shall be entitled to their discharge so much the sooner, upon the certificate of the warden or keeper of such jail or penitentiary, with the approval of the Attorney-General. [R. S.]

Act of March 2, 1867, ch. 146, 14 Stat. L. 424; Act of March 5, 1872, ch. 30, 17 Stat. L. 35.

This and the following section 5544 are superseded in part by the Acts of March 3, 1875, ch. 145, and June 21, 1902, ch. 1140, following.

"The words 'state jail or penitentiary,' used in that section, are not to be considered as intended to limit the provision to jails supported by the state at large, if in any state there are such jails, as distinguished from the common jails kept by the counties of the state by virtue of state laws. They refer to the jails and penitentiaries within a state, whether state, city, or county institutions, which are permitted by the state to be used for the confinement of the prisoners of the United States." U. S. v. Schroeder, (1877) 14 Blatchf. (U. S.) 344, 27 Fed. Cas. No. 16,233.

Prisoners in state jails not under state system of commutation.—A federal prisoner confined in a state jail in which state there is a system of commutation, but which does not allow any deduction to prisoners confined in jails, is entitled to the reduction of one month on a sentence of one year allowed by this section on the certificate and approval as herein required. U. S. v.

Schroeder, (1877) 14 Blatchf. (U. S.) 344, 27 Fed. Cas. No. 16,233.

Prisoners in county jails.—*In re Deering*, (1894) 60 Fed. Rep. 265, the court said: "There are no credits provided for the good behavior of prisoners confined in the county jails of this state [California], and hence it follows that the provisions of section 5543 of the Revised Statutes are applicable to a United States prisoner so confined. That part of this section relating to prisoners in a state penitentiary is undoubtedly superseded by the Act of March 3, 1875, but it does not follow that the provision of the section relating to prisoners confined in jails is repealed or modified by that Act."

Power of Congress to impose conditions on commutation.—"Having jurisdiction to impose the penalty of the full original term, the federal government had undoubted authority to couple any curtailment of that term with any conditions it chose to prescribe. It might have restricted such conditions so as to require abstinence from offense against its own laws only, or it might, as it has done, require the convict who is thus enlarged *ex gratia*, to continue to be a law-abiding member of the community, offending against no laws, state or federal, which he is bound to obey." *In re Willis*, (1897) 83 Fed. Rep. 148.

Sec. 5544. [Application of preceding section.] The preceding section, however, shall apply to such prisoners only as are confined in jails or penitentiaries where no credits for good behavior are allowed; but, in other cases, all prisoners now or hereafter confined in the jails or penitentiaries of any State for offenses against the United States, shall be entitled to the same rule of credits for good behavior applicable to other prisoners in the same jail or penitentiary. [R. S.]

Act of June 14, 1870, ch. 128, 16 Stat. L. 151.

Superseded in part.—See note under preceding section.

"The statute is mandatory, giving the convict a right to the credit for the good time provided his conduct has been such as to deserve it, and it is made the positive duty of the warden of the penitentiary, if the conduct of the convict has been good, to enter a certificate on the warrant of commitment showing the fact. The time fixed by the sentence of the court remains just as fixed until the time expires, less the deduction for good time, when the fact whether the sentence is to be cut down is determined by inspection of the certificate on the warrant of commitment. There is practically no uncertainty in this in the ordinary apprehensions except such uncertainty as may exist by rea-

son of doubt as to what the conduct of the convict will be." *Howard v. U. S.*, (C. C. A. 1896) 75 Fed. Rep. 986.

Equal rights with state convicts.—United States prisoners confined in state penitentiaries or prisons where there is a "rule of credits," or "system of commutation," are entitled only to an equality of right with the state convicts confined therein with respect to commutation. *In re Raymond*, (1901) 110 Fed. Rep. 155.

A sentence does not commence to run until the prisoner is confined in the particular prison named therein. He is not entitled to deduct therefrom the time during which he was confined in a county jail pending the determination of an appeal for a review and reversal of the judgment on a supersedeas obtained by him. *Dimmick v. Tompkins*, (1904) 194 U. S. 541.

On successive sentences.—Where successive sentences are lawfully imposed whatever credits for good behavior a prisoner may be entitled to can only be properly taken from the end of the entire term of his imprisonment in states in which such is the law. *In re Greenwald*, (1896) 77 Fed. Rep. 590.

Commutation depending upon discretion of state officers.—Where the commutation of a sentence in a state depends upon the discretion of state officers it is not a "rule of credits" such as will be applicable to federal prisoners. *U. S. v. Byers*, (1904) 127 Fed. Rep. 995.

Imprisonment for contempt.—"Summary contempt proceedings are absolutely necessary to enable a court to protect its own dignity and even preserve its existence; and to enable it to effectively discharge its proper functions, the proceeding must be at all times under the control of the courts. The proceedings are *sui generis*, especially provided for in separate acts, and are not intended to be included in the ordinary general provisions embraced within the criminal code or system within which the party is entitled to all the guaranties provided by the Constitution. [A party undergoing imprisonment for contempt] is not 'a prisoner convicted of an offense against the laws of the United States' within the meaning of the statute allowing credits for good behavior." *In re Terry*, (1889) 37 Fed. Rep. 649.

Conditional commutation.—"The statute is self-executing so far as the annexing of the invariable condition to commutation is concerned. Good-conduct prisoners, by virtue of its provisions, earn a conditional commutation only, which becomes forfeited upon conviction of felony within the period of original sentence." *In re Willis*, (1897) 83 Fed. Rep. 148.

Where a prisoner is confined in a penitentiary in a state having a system of commutation he is not entitled to an unconditional commutation for good behavior under R. S. sec. 5543; and a state statute providing that on conviction of any felony between the date of his discharge and the date of the expiration of the full term for which he was sentenced he should be compelled to serve such portion of the previous sentence as had

been commuted, will apply to United States prisoners, whether the offense be a felony under the state law or under the federal law. Such unexpired part of the former sentence is to be served in the penitentiary to which he is sentenced on the subsequent conviction. *In re Willis*, (1897) 83 Fed. Rep. 148; *In re Walters*, (1904) 128 Fed. Rep. 794.

Federal interference with governor.—"The federal government does not undertake to instruct the governor of the state as to what he shall or shall not do touching federal prisoners." *In re Willis*, (1897) 83 Fed. Rep. 148.

U. S. prisoner in California county jail.—"The system of commutations for the state of California * * * relate only to state prisons, their officers and duties, and to the convicts therein confined, their government, discipline, rights, etc. They have no application to county jails or to prisoners therein confined. The system does not include credits for minor offenders confined for short periods of time in county jails or otherwise. The provisions therefore do not reach" a prisoner of the United States in a county jail. *In re Terry*, (1889) 37 Fed. Rep. 649.

Credits for sentence of year or over only.—"Now, there are no credits here [California] at all for months, or fractions of a year, or of a month, or for days. The shortest term for which any credits are allowed is one year." *In re Terry*, (1889) 37 Fed. Rep. 649.

Under Pennsylvania Act.—"On the assumption that the Pennsylvania Act of May 11, 1901, entitled 'An Act providing for the commutation of sentences for good behavior of convicts in prisons, penitentiaries, workhouses, and county jails of this state, and regulations governing the same,' is by congressional legislation applicable to United States prisoners confined in the Eastern Penitentiary of that state at the time of its enactment, a United States prisoner so confined has no right to commutation for good conduct in the absence of a report on that subject by the board of prison officials to the governor and action thereon by the latter, with the approval of the designated state officers." *In re Raymond*, (1901) 110 Fed. Rep. 155.

An act to provide for deductions from the terms of sentence of United States prisoners.

[Act of March 3, 1875, ch. 145, 18 Stat. L. 479.]

[Sec. 1.] [Commutation of term for good conduct.] That all prisoners who have been, or shall hereafter be, convicted of any offence against the laws of the United States, and confined, in execution of the judgment or sentence upon such conviction, in any prison or penitentiary of any State or Territory which has no system of commutation for its own prisoners, shall have a deduction from their several terms of sentence of five days in each and every calendar month during which no charge of misconduct shall have been sustained against each severally, who shall be discharged at the expiration of his term of sentence less the time so deducted, and a certificate of the warden or keeper of such prison penitentiary of such deduction shall be entered on the warrant of

commitment: *Provided*, That, if during the term of imprisonment the prisoner shall commit any offence for which he shall be convicted by a jury, all remissions theretofore made shall be thereby annulled. [18 Stat. L. 479.]

But see following Act.

"State prisons" and "jails" distinguished. — "We are of opinion," said the court, "that the words 'any prison or penitentiary' in the Act of March 3, 1875 (1 Supp. R. S. 184), mean state prison or penitentiary and do not include county jails or places employed for temporary confinement, or confinement for short periods for petty offenses. In some states the place of confinement in punishment of the higher grade of offenses is called a 'state prison' and in others a 'penitentiary,' and Congress recognized this fact in providing for credits in this Act. The Act supersedes the similar provision in secs. 5543 and 5544, R. S., in which the words 'jail or penitentiary' are used. This change in the language is significant and indicates an intention to limit credits to those state prisons and penitentiaries properly so called." *In re Corcoran*, (1889) 47 Fed. Rep. 211.

To what prisoners applicable. — "The Act of Congress applies only to United States prisoners who are confined in a prison or penitentiary of a state or territory, that is to say, in a state or territorial institution, and does not in terms or by fair interpretation of language apply to a United States prisoner confined in a county jail." *In re Deering*, (1894) 60 Fed. Rep. 265; *U. S. v. Schroeder*, (1877) 14 Blatchf. (U. S.) 344, 27 Fed. Cas. No. 10,233; *In re Terry*, (1889) 37 Fed. Rep. 649; *U. S. v. Goujon*, (1889) 39 Fed. Rep. 773.

"The fact that the state system of com-

munication does not allow any deduction to prisoners confined in jails does not affect the question. There is still a state system of commutation, and the fact of the existence of such a system takes the case out of the scope of the Act of 1875 without regard to the particular provisions of that system." *U. S. v. Schroeder*, (1877) 14 Blatchf. (U. S.) 344, 27 Fed. Cas. No. 10,233.

In California. — By its express terms the deductions provided for by this Act can be allowed only to prisoners confined in a state or territory having no system of commutation for its own prisoners; and as the state of California has such system it necessarily results that the deduction provided for by that Act does not apply to the case of federal prisoners. *U. S. v. Goujon*, (1889) 39 Fed. Rep. 773.

Effect of particular provisions of state system. — "California has a system of commutations for its own prisoners. And 'the fact of the existence of such a system also takes the case out of the scope of the Act of 1875 without regard to the particular provisions of the system.'" *In re Terry*, (1889) 37 Fed. Rep. 649.

"The system of commutation provided by the statute of California (Act Cal. 1880, as amended March 14, 1881), has no application to county jails or to prisoners confined therein; and in respect to prisoners confined in a state prison no credit is allowed when the term of imprisonment is less than one year." *U. S. v. Goujon*, (1889) 39 Fed. Rep. 773.

SEC. 2. [Clothing, etc., to be furnished discharged prisoner.] That on the discharge from any prison of any person convicted under the laws of the United States on indictment, he or she shall be provided by the warden or keeper of said prison with one plain suit of clothes and five dollars in money, for which charge shall be made and allowed in the accounts of said prison with the United States: *Provided*, That this section shall not apply to persons sentenced for a term of imprisonment of less than six months. [18 Stat. L. 480.]

An Act To regulate commutation for good conduct for United States prisoners.

[Act of June 21, 1902, ch. 1140, 32 Stat. L. 397.]

SEC. 1. [Commutation for good conduct increased.] That each prisoner who has been or shall hereafter be convicted of any offense against the laws of the United States, and is confined, in execution of the judgment or sentence upon any such conviction, in any United States penitentiary or jail, or in any penitentiary, prison, or jail of any State or Territory, for a definite term, other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence to be estimated as follows, commencing on the first day of his arrival at the penitentiary, prison, or jail: Upon a sentence of not less than six months nor more than one year, five days

for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; upon a sentence of ten years or more, ten days for each month. When a prisoner has two or more sentences, the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. [32 Stat. L. 397.]

Prior sentences.—This Act does not apply to persons sentenced before its enactment. *In re Walters*, (1904) 128 Fed. Rep. 794.

SEC. 2. [*Restoration of forfeited commutations.*] That in the case of convicts in any United States penitentiary, the Attorney-General shall have the power to restore to any such convict who has heretofore or may hereafter forfeit any good time by violating any existing law or prison regulation such portion of lost good time as may be proper, in his judgment, upon recommendations and evidence submitted to him by the warden in charge. Restoration, in the case of United States convicts confined in State and Territorial institutions, shall be regulated in accordance with the rules governing such institutions, respectively. [32 Stat. L. 397.]

SEC. 3. [*Effect of Act — prior sentences — repeal.*] That this Act shall take effect and be in force from and after thirty days from the date of its approval, and shall apply only to sentences imposed by courts subsequent to the time that this Act takes effect, as hereinbefore provided. Prisoners serving under any sentence imposed prior to such time shall be entitled and receive the commutation heretofore allowed under existing laws. Such existing laws are hereby repealed as to all sentences imposed subsequent to the time when this Act takes effect. [32 Stat. L. 398.]

Sec. 5545. [*Actual reasonable cost of subsisting prisoners to be paid.*] Hereafter there shall be allowed and paid by the Attorney-General, for the subsistence of prisoners in the custody of any marshal of the United States and the warden of the jail in the District of Columbia, such sum only as it reasonably and actually cost to subsist them. And it shall be the duty of the Attorney-General to prescribe such regulations for the government of the marshals and the warden of the jail in the District of Columbia, in relation to their duties under this chapter, as will enable him to determine the actual and reasonable expenses incurred. [R. S.]

Act of May 12, 1864, ch. 85, 13 Stat. L. 75; Act of March 5, 1872, ch. 30, 17 Stat. L. 35.

Sec. 5546. [*Designation of penitentiary by Attorney-General — transportation of prisoners — change of place of imprisonment.*] All persons who have been, or who may hereafter be, convicted of crime by any court of the United States, including consular courts, whose punishment is imprisonment in a District or Territory or country where, at the time of conviction or at any time during the term of imprisonment, there may be no penitentiary or jail suitable for the confinement of convicts, or available therefor, shall be confined during the term for which they have been or may be sentenced, or during the residue of said term, in some suitable jail or penitentiary in a convenient State or Territory, to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the District or Territory where the conviction has occurred; and in case of convictions by a consular court the transportation shall be by some

properly qualified agent or agents designated by the Department of State, the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and agent or agents to be defrayed from the appropriation for bringing home criminals; and if the conviction be had in the District of Columbia, the transportation and delivery shall be by the warden of the jail of that District, the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and the marshal, or the warden of the jail in the District of Columbia only, to be paid by the Attorney-General out of the judiciary fund. But if, in the opinion of the Attorney-General, the expense of transportation from any State, Territory, or the District of Columbia in which there is no penitentiary will exceed the cost of maintaining them in jail in the State, Territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated in their respective sentences. And the place of imprisonment may be changed in any case when, in the opinion of the Attorney-General, it is necessary for the preservation of the health of the prisoner, or when, in his opinion, the place of confinement is not sufficient to secure the custody of the prisoner, or because of cruel and improper treatment: *Provided, however,* That no change shall be made in the case of any prisoner on the ground of the unhealthiness of the prisoner or because of his treatment, after his conviction and during his term of imprisonment, unless such change shall be applied for by such prisoner, or some one in his behalf. *R. S.]*

This section was amended by the Act of March 3, 1901, ch. 873, 31 Stat. L. 1450, to read as above.

The section as originally enacted was as follows:

"SEC. 5546. All persons who have been, or who may hereafter be, convicted of crime, by any court of the United States, whose punishment is imprisonment, in a district or Territory where, at the time of conviction, there may be no penitentiary or jail suitable for the confinement of convicts, or available therefor, shall be confined during the term for which they have been or may be sentenced in some suitable jail or penitentiary in a convenient State or Territory, to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the district or Territory where the conviction has occurred; and if the conviction be had in the District of Columbia, in such case the transportation and delivery shall be by the warden of the jail of that District; the reasonable actual expense of transportation, necessary subsistence and hire, and transportation of guards and the marshal, or the warden of the jail in the District of Columbia, only, to be paid by the Attorney-General, out of the judiciary fund. But if, in the opinion of the Attorney-General, the expense of transportation from any State, Territory, or the District of Columbia, in which there is no penitentiary, will exceed the cost of maintaining them in jail in the State, Territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated in their respective sentences." Act of May 12, 1864, ch. 85, 13 Stat. L. 74;

Act of March 5, 1872, ch. 30, 17 Stat. L. 35.

It was first amended by the Act of July 12, 1876, ch. 183, 19 Stat. L. 88, to read as follows:

"SEC. 5546. All persons who have been, or who may hereafter be, convicted of crime by any court of the United States whose punishment is imprisonment in a District or Territory where, at the time of conviction, or at any time during the term of imprisonment, there may be no penitentiary or jail suitable for the confinement of convicts or available therefor, shall be confined during the term for which they have been or may be sentenced, or during the residue of said term, in some suitable jail or penitentiary in a convenient State or Territory, to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the District or Territory where the conviction has occurred: and if the conviction be had in the District of Columbia, the transportation and delivery shall be by the warden of the jail of that District; the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and the marshal, or the warden of the jail in the District of Columbia, only, to be paid by the Attorney-General, out of the judiciary fund. But if, in the opinion of the Attorney-General, the expense of transportation from any State, Territory or the District of Columbia, in which there is no penitentiary, will exceed the cost of maintaining them in jail in the State, Territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated

in their respective sentences. And the place of imprisonment may be changed in any case, when, in the opinion of the Attorney-General, it is necessary for the preservation of the health of the prisoner, or when, in his opinion, the place of confinement is not sufficient to secure the custody of the prisoner, or because of cruel or improper treatment: *Provided, however*, That no change shall be made in the case of any prisoner on the ground of the unhealthiness of the prisoner, or because of his treatment, after his conviction and during his term of imprisonment, unless such change shall be applied for by such prisoner, or some one in his behalf."

This amendment was incorporated into section 5546 of the Revised Statutes in the second edition.

The section was further amended as stated above to read as set forth in the text.

Effect of amendment. — "The changes made by that form of amendment are to be regarded usually as not changing the whole scope and spirit of the law, but rather as confined to the specific alterations of omission or addition in the old law." (1902) 24 Op. Atty.-Gen. 549.

Application of section. — "Sections 5540-5542 were apparently designed to apply to cases where the state contains more than one district, while section 5546 was probably intended, notwithstanding the use of the words 'district or territory' in the first clause, to apply to the not infrequent cases where there is no suitable penitentiary within the state, in which case the court is authorized to commit the convict to some suitable penitentiary 'in a convenient state or territory to be designated by the attorney-general.'" U. S. v. McMahon, (1896) 164 U. S. 81.

Construed with other sections. — "This section is to be construed in connection with the other sections which have been referred to. In fact it may be treated as a proviso to sections 5541 and 5542." *Ex p.* Karstendick, (1876) 93 U. S. 396.

Compared with R. S. sec. 5541. — "Section 5546 neither by express words nor by implication repeals, modifies, or changes the provisions of section 5541. Section 5546 is legislation on a subject entirely different from that of section 5541. Its object is to define the duties of the attorney-general when there is no jail or penitentiary in the district or state where the prisoner is convicted in which such person may be confined. It preserves throughout the distinction between jail as one class of prisons, and state jail or penitentiary as another class of prisons." U. S. v. Cobb, (1890) 43 Fed. Rep. 570.

"The only difference between * * * sections 5541 and 5546 relates to the class of cases where the judge may designate the place of imprisonment, and the class where the attorney-general may designate such place. The attorney-general may designate the place of imprisonment in all cases where there is not a suitable jail or penitentiary for the confinement of prisoners in a district or territory where they may be convicted." *Ex p.* McClusky, (1889) 40 Fed. Rep. 71.

Authority of attorney-general. — "There is

nothing, therefore, in this amendment, when read in the light of its history, which extends the attorney-general's authority beyond the boundaries contemplated in the section as it stood before the amendment." (1889) 19 Op. Atty.-Gen. 377.

Courts notified of designation. — "The prevalent practice under these provisions has obtained in accordance with which the attorney-general notifies the different courts, through the district attorney, of the designation that he has made for the different districts from time to time and procures to be entered upon the minutes of the court in each district an order showing the designation which is in force." *Gardes v. U. S.*, (C. C. A. 1898) 87 Fed. Rep. 172.

Power of court to designate. — Unless the law of Congress prescribes in what particular place the punishment of an offense shall be executed, the District Court has the power to designate any place within its jurisdiction; and, subject to this qualification, the Acts of Congress of March 3, 1825 (4 Stat. 118), June 30, 1834 (4 Stat. 739), and March 3, 1865 (13 Stat. 500), so far as they refer to the place of imprisonment, are merely declaratory. *Ex p.* Geary, (1871) 2 Biss. (U. S.) 485, 10 Fed. Cas. No. 5,293.

The court cannot direct imprisonment in a penitentiary when the law assigns that institution for imprisonment under judgments of a different character. *In re Bonner*, (1894) 151 U. S. 242.

Sentence part in jail, part in penitentiary. — The District Court does not exceed its power in fixing a part of the term of imprisonment in the county jail and the remainder in the penitentiary. *Ex p.* Geary, (1871) 2 Biss. (U. S.) 485, 10 Fed. Cas. No. 5,293.

Presumption of good reason for transportation. — "Why these convicts were sent to a penitentiary outside the district in which they were tried does not appear, but we are bound," said the court, "to presume that the action of the court in that particular was taken for a good and sufficient reason and was dictated by what it conceived to be the best interests of the government." U. S. v. McMahon, (1896) 164 U. S. 81.

Imprisonment without state. — "Neither do we think the objection tenable that there can be no imprisonment in a penitentiary outside of Louisiana if there are within that state jails that are both suitable and available. It is for the court to determine whether the imprisonment shall be in a jail or a penitentiary. If in a penitentiary, then a penitentiary must be found inside of the state suitable and available in order that the sentence to be pronounced may be executed there. If there is none, resort may be had to those of another state. Imprisonment need not necessarily be ordered in a jail because the penitentiary of the state is unsuitable." *Ex p.* Karstendick, (1876) 93 U. S. 396.

Designation of prison as part of judgment. — "If the law-makers had regarded the designation of the prison as a part of the solemn judgment of the court, it is hardly probable that they would have lodged with an execu-

tive officer the power not only to change and modify that judgment, but to do this in the absence of the prisoner by a mere stroke of the pen." *Ex p. Waterman*, (1887) 33 Fed. Rep. 29.

"Congress clearly recognizes a distinction between a sentence and an order for the execution of the sentence. After the former has been passed the order is made designating the prison, but the order is not necessarily a part of the judgment of the court." *Ex p. Waterman*, (1887) 33 Fed. Rep. 29.

Recital in judgment of conditions precedent to transportation.—Where a prisoner is committed to a penitentiary in another state it is not necessary that the judgment of the court should recite the fact that the conditions precedent to the exercise of such power existed, therefore it is not necessary that the judgment should recite that such place of imprisonment without the state had been designated by the attorney-general as the proper place for the confinement of prisoners. *In re Wilson*, (1883) 18 Fed. Rep. 33, *affirmed*, (1885) 114 U. S. 427.

The omission of the record to state that there was no suitable penitentiary within the state, and that the attorney-general had designated a certain place as a suitable place of imprisonment outside of the state, is immaterial and is no ground for the discharge of the prisoner on a writ of habeas corpus. *Ex p. Wilson*, 114 U. S. 417.

Home of convict not material.—"It is equally clear that section 5546, amended or not amended, contains nothing to indicate that Congress was considering the home or domicile of the convict in providing for his confinement in a suitable jail or penitentiary." (1902) 24 Op. Atty-Gen. 549.

Execution of sentence ordered by court at designated place.—The sole power of designation is in the attorney-general; but when he has designated, if the facts which authorize the change of place exist, it is as much within the power of the court to order its sentence to be executed at the designated place, as to determine which of two prisons in a state, equally suitable and equally available for the punishment to be inflicted, shall be employed for that purpose. The policy of the law is to avoid circuitry of action, and to permit the courts to do directly, as far as possible, all that they may do indirectly. *Ex p. Karstendick*, (1876) 93 U. S. 396.

In Virginia.—"Convicts of this district are sent to penitentiaries outside of Virginia, under the authority of section 5546 of the Revised Statutes, which does not, like section 5541, limit the class of persons sent to those who are sentenced for 'longer than one year.' The practice of the court when sentencing for as long a term as one year is to order the confinement to be in a penitentiary." U. S. r. Smith, (1889) 40 Fed. Rep. 755.

Unauthorized confinement in penitentiary.—"It could not have been contemplated that a person convicted under a statute where the punishment prescribed is confinement in jail could, by reason of being sent to another state because there was no jail in the district or state where he was convicted where

he could be confined, be confined in a state prison or penitentiary of the other state to which he is sent." U. S. v. Cobb, (1890) 43 Fed. Rep. 570.

"The mere fact of the attorney-general engaging prisons in another state than that in which the convict is sentenced cannot change the character of the convict's punishment or make that infamous which was not so by the sentence, nor authorize the court to confine in a state prison or penitentiary, with or without hard labor, a person who has been convicted and sentenced under a statute which prescribes imprisonment alone as the punishment, and excludes the idea of imprisonment in a state jail or penitentiary with or without hard labor. Any other construction would lead to the unreasonable conclusion that a person convicted under a statute that imposes confinement for a term not exceeding one year, and that does not impose hard labor as a part of the punishment, and sentenced to confinement for one month, could be sent to a state jail or penitentiary." U. S. v. Cobb, (1890) 43 Fed. Rep. 570.

Habeas corpus for wrongful detention.—The fact that the prisoner is detained for a time, either before or after sentence, in the county jail, does not, in either case, authorize a writ of habeas corpus. *Ex p. Geary*, (1871) 2 Biss. (U. S.) 485, 10 Fed. Cas. No. 5,293.

Determination by designation of prison of character of offense.—"If he would designate a state penitentiary as the place of confinement of persons convicted in one district, and fail to do so in another district, the same crime would be infamous in one case, while in the other it would be entirely free from that character. * * * Neither the judge nor the attorney-general can at their pleasure determine the infamous character of an offense. The test is whether the statutes authorize the court to award an infamous punishment, not whether the punishment ultimately awarded is infamous; whether the accused is in danger of being subjected to an infamous punishment. If convicted of larceny he is, under the power of the attorney-general to designate the place of imprisonment, in such danger." *Ex p. McClusky*, (1889) 40 Fed. Rep. 71.

"The statutes of the United States require in some cases that the sentence shall be to confinement at hard labor. They provide in other cases that the punishment may be imprisonment for more than a year without adding the words 'at hard labor.' It may be difficult to perceive, and more difficult to accurately express, the distinction which we suggest; but we believe there is a material distinction in the public thought between a sentence to confinement at hard labor, and a sentence to confinement in a designated state penitentiary where hard labor will be required of the person sentenced as a part of the discipline of the prison. 'At the present day imprisonment in a state prison or penitentiary, with or without hard labor, is an infamous punishment;' and 'by the express provisions of Acts of Congress, either a sentence to imprisonment for a period longer than one year, or a sentence to imprison-

ment and confinement to hard labor, may be ordered to be executed in a state prison or penitentiary,' and thus in either case stamp the convict with the stigma of subjection to an infamous punishment. Still we think that the embodying in the sentence the words 'at hard labor' gives the stigma an emphasis which the statute does not require in this case. We conclude from a careful consideration of the subject that the sentence should not go beyond the language of the statute in describing the character of the confinement, and we modify the sentence in this case by striking out the words 'at hard labor.'" *Gardes v. U. S.*, (C. C. A. 1898) 87 Fed. Rep. 172.

Power to change place of imprisonment.—The power of changing the place of imprisonment of a prisoner on the ground of his health is specifically vested in the attorney-general, and after the expiration of the term of court in which the sentence was imposed, it is not within the power of the court to order such removal, from a penitentiary to a county jail. *U. S. v. Greenwald*, (1894) 64 Fed. Rep. 6.

Removal by court.—The court may order a prisoner's removal to another penitentiary in the same state, of equal degree and grade, and where the prison discipline would be the same as that of the penitentiary in which the prisoner was first confined. *U. S. v. Greenwald*, (1894) 64 Fed. Rep. 6.

Removal by President.—"The President, by virtue of his office and without authority given by some statute, has no power to remove a convict from one prison to another." Aug. 14, 1889. (1889) 19 Op. Atty.-Gen. 377.

Removal from penitentiary to county jail.—It is not within the power of the court, after the expiration of the term of court during which a prisoner was sentenced to imprisonment in a state penitentiary, "to order the removal of the prisoner to a county jail, a place of incarceration for the punishment of minor offenses and the custody of transient prisoners, where the ignominy of confinement is devoid of the 'infamous character' which an imprisonment in a state jail or penitentiary carries with it and which is regarded as part of the punishment. The discipline in a county jail in this state is not the same as enforced in either of the state prisons, and such a change of imprisonment would virtually result in lessening the prisoner's punishment and involve the exercise of authority vested exclusively in the executive department." *U. S. v. Greenwald*, (1894) 64 Fed. Rep. 6.

"It was not the purpose of Congress by this legislation to change the jurisdiction of any court as to any class of crimes or offenses, or to change the punishment theretofore attached to any crime or offense, but to regulate and fix the places of punishment whether the sentence be to the jail or penitentiary. By no just construction can it be held that the attorney-general is given the power to change the sentence of a court from the jail to the penitentiary or to order that a prisoner sentenced to the former shall

be confined in the latter. He may * * * remove a prisoner from one jail to another, or from one penitentiary to another." *U. S. v. Marshall*, (1887) 6 Mackey (D. C.) 34.

"The right to change the place of confinement in the absence of the prisoner has been asserted and frequently exercised; sometimes upon the request of the prisoner himself, sometimes through the solicitation of his relatives and friends, and sometimes from motives of public policy. There can be no reason founded upon principle why the prisoner should be present when the order effecting this change is signed. To require such presence would often be attended not only with large and useless expense, as in the case at bar, but with annoyance, inconvenience, and delay, not only to the officers of the law but to the prisoner himself." *Ex p. Waterman*, (1887) 33 Fed. Rep. 29.

Expenses of marshal.—"We see no reason," said the court, "to suppose that this Act was intended to repeal R. S. secs. 5540-5542, since the Act is a mere re-enactment of original section 5546 enacted in 1864 (one year before section 5541). * * * Upon the other hand, it appears to us that it was the intention of Congress that these several provisions should be read together, and that the restriction of the marshal to his expenses of transportation was only designed to apply where the attorney-general has found that there is no available penitentiary within the district and has designated a prison in another district for that purpose. It does not necessarily follow that because a portion of his travel was outside his district he is limited to his expenses, since the first paragraph of section 829 * * * is a general provision allowing him mileage with the exception provided for in the next paragraph." *U. S. v. McMahon*, (1896) 164 U. S. 81, *affirming* (C. C. A. 1895) 65 Fed. Rep. 976.

Convict of consular court.—"There is no warrant of law for confining in a Philippine prison a Filipino sailor convicted in the United States consular court, at Shanghai, China, of the murder of a Chinaman on the U. S. army transport *Listrom*, and sentenced to fifteen years imprisonment." (1902) 24 Op. Atty.-Gen. 549.

"It is clear that section 5546 in speaking of 'a convenient state or territory,' did not include the Philippine Islands, and it is equally clear that the specific amendments, which do not alter the words 'convenient state or territory,' and indicate no intent beyond including consular courts among the courts of the United States whose convicts were intended to be provided for, contain nothing from which it can be inferred that the Philippine Islands were in contemplation." (1902) 24 Op. Atty.-Gen. 549.

In (1875) 14 Op. Atty.-Gen. 522, prior to the amendment of this section, it was held that in the case of consular courts clothed with criminal jurisdiction, as in the case of other courts invested with similar jurisdiction, the rule applies that a sentence of imprisonment cannot be legally executed beyond the territorial jurisdiction of the court which pro-

nounced it unless authority thus to execute the sentence is conferred by the legislature. Hence, in the absence of any law giving power to send the convicts of consular courts at Smyrna and Constantinople to this country for imprisonment, if such convicts were brought to the United States for that purpose they could not legally be held.

In (1889) 19 Op. Atty-Gen. 377, Aug. 14,

1889, it was also held that "there is no statute which authorizes a convict, sentenced to prison by a consular court of the United States, to be brought to the United States for imprisonment, and there held to serve out his sentence, and in the absence of such a statute the removal of the convict to this country for that purpose would be unlawful."

Sec. 5547. [*Attorney-General to contract for subsistence, etc.*] The Attorney-General shall contract with the managers or proper authorities having control of such prisoners, for the imprisonment, subsistence, and proper employment of them, and shall give the court having jurisdiction of such offenses notice of the jail or penitentiary where such prisoners will be confined. [R. S.]

Act of May 12, 1864, ch. 85, 13 Stat. L. 75; Act of March 5, 1872, ch. 30, 17 Stat. L. 35.

Terms provided by state statute.—A state statute providing certain terms upon which federal prisoners may be received and supported in the state jails or prisons will not bind the United States unless in some way the United States consented to its provisions. *Lewis, etc., County v. U. S.*, (1896) 77 Fed. Rep. 732.

By contract only.—"It is evident * * * that it is expected the United States, by its

attorney-general, shall contract for the keeping and custody, under certain circumstances, of United States prisoners in some state or territorial jail or penitentiary. It was not contemplated that any state or territory by a statute could dictate to the United States what it should pay for the rent of any county jail. What the United States must pay for the rent of any jail must rest in contract, express or implied." *Lewis, etc., County v. U. S.*, (1896) 77 Fed. Rep. 732.

Sec. 5548. [*Court may order sentences executed in house of correction.*] Whenever any person is convicted of any offense against the United States which is punishable by fine and imprisonment, or by either, the court by which the sentence is passed may order the sentence to be executed in any house of correction or house of reformation for juvenile delinquents within the State or district where such court is held, the use of which is authorized by the legislature of the State for such purpose. [R. S.]

Act of March 3, 1835, ch. 40, 4 Stat. L. 777.

Sec. 5549. [*Confinement of juvenile offenders.*] Juvenile offenders against the laws of the United States, being under the age of sixteen years, and who may hereafter be convicted of crime, the punishment whereof is imprisonment, shall be confined during the term of sentence in some house of refuge to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such house of refuge by the marshal of the district where such conviction has occurred; or if such conviction be had in the District of Columbia, then the transportation and delivery shall be by the warden of the jail of that district, and the reasonable actual expense of the transportation, necessary subsistence, and hire, and transportation of assistants and the marshal or warden, only, shall be paid by the Attorney-General, out of the judiciary fund. [R. S.]

Act of March 3, 1865, ch. 121, 13 Stat. L. 538; Act of March 5, 1872, ch. 30, 17 Stat. L. 35. See further Act of March 3, 1891, ch. 529, sec. 7, *infra*, p. 26.

Sec. 5550. [*Attorney-General to contract for their subsistence, etc.*] The Attorney-General shall contract with the managers or persons having control of such houses of refuge for the imprisonment, subsistence, and proper employment of all such juvenile offenders, and shall give the several courts of the United States and of the District of Columbia notice of the places so provided

for the confinement of such offenders; and they shall be sentenced to confinement in the house of refuge nearest the place of conviction so designated by the Attorney-General. [R. S.]

Act of March 3, 1865, ch. 121, 13 Stat. L. 538; Act of March 5, 1872, ch. 30, 17 Stat. L. 35.

An act to prohibit any officer, agent, or servant of the Government of the United States of America to hire or contract out the labor of prisoners incarcerated for violating the laws of the Government of the United States of America.

[Act of Feb. 23, 1887, ch. 213, 24 Stat. L. 411.]

[SEC. 1.] [*U. S. convicts not to be hired out to labor.*] That it shall not be lawful for any officer, agent, or servant of the Government of the United States to contract with any person or corporation, or permit any warden, agent, or official of any State prison, penitentiary, jail, or house of correction where criminals of the United States may be incarcerated to hire or contract out the labor of said criminals, or any part of them, who may hereafter be confined in any prison, jail, or other place of incarceration for violation of any laws of the Government of the United States of America. [24 Stat. L. 411.]

SEC. 2. [*Penalty for violation of act.*] That any person who shall offend against the provisions of this act shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned for a term not less than one year nor more than three years, at the discretion of the court, or shall be fined not less than five hundred dollars nor more than one thousand dollars for each offense. [24 Stat. L. 411.]

SEC. 3. [*Repeal.*] That all acts or parts of acts inconsistent with the provisions of this act are hereby repealed; and this act shall take effect and be in force from and after its passage. [24 Stat. L. 411.]

[SEC. 1.] [*Keeping of Indian convicts.*] * * * That hereafter no payment shall be made to any State or Territory for maintenance and keeping in prison of Indian convicts convicted in any State or Territorial court for violation of the provisions of said section nine of the said Act approved March third, eighteen hundred and eighty-five. * * * [28 Stat. L. 441.]

This is from the Deficiency Appropriation Act of Aug. 23, 1894, ch. 307.
The Act referred to in the text is given in INDIANS, vol. 3, p. 388.

PRIVATE LAND CLAIMS, COURT OF.

Act of March 3, 1891, ch. 539, 48.

- Sec. 1. Court of Private Land Claims Established — Justices — Appointment — Salaries — Jurisdiction and Procedure — Officers of Court — Sessions, 48.*
- 2. United States Attorney — Interpreter, 50.*
 - 3. Notice of Organization of Court to Be Published, 50.*
 - 4. Records of General Land Office and Surveyors-General to Be Produced in Court, 51.*
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 - 10. Final Decree of Confirmation to Be Certified to Commissioner of General Land Office — Survey and Patent, 56.*
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Act of June 6, 1900, ch. 791, 65.

Sec. 1. Publication of Notice of Survey, 65.

An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories.

[Act of March 3, 1891, ch. 539, 26 Stat. L. 854.]

[SEC. 1.] [Court of private land claims established — justices — appointment — salaries — jurisdiction and procedure — officers of court — sessions.] That there shall be, and hereby is, established a court to be called the court of private land claims, to consist of a chief justice and four associate justices, who shall be, when appointed, citizens and residents of some of the States of the United States, to be appointed by the President, by and with the advice

Transfer of powers to commissioner of general land office. — By the Sundry Civil Appropriation Act of April 28, 1904, ch. 1762, 33 Stat. L. 485, all the powers of this court, in the approval of surveys executed under its decrees of confirmation, are conferred upon the commissioner of the general land office from and after June 30, 1904. See Appendix.

and consent of the Senate, to hold their offices for the term expiring on the thirty-first day of December, anno Domini eighteen hundred and ninety-five; any three of whom shall constitute a quorum. Said court shall have and exercise jurisdiction in the hearing and decision of private land claims according to the provisions of this act. The chief justice and associate justices shall each receive a compensation of five thousand dollars per year, payable monthly, and their necessary traveling and personal expenses while engaged in the performance of their duties. The said court shall appoint a clerk, at a salary of two thousand dollars a year, who shall attend all the sessions of the court, and a deputy clerk, where regular terms of the court are held, at a salary of eight hundred dollars a year. The court shall also appoint a stenographer, at a salary of fifteen hundred dollars a year, who shall attend all the sessions of the court, and perform the duties required of him by the court.

The said court shall have power to adopt all necessary rules and regulations for the transaction of its business and to carry out the provisions of this act; to issue any process necessary to the transaction of the business of said court, and to issue commissions to take depositions as provided in chapter seventeen of title thirteen of the Revised Statutes of the United States. Each of said justices shall have power to administer oaths and affirmations. It shall be the duty of the United States marshal for any district or Territory in which the court is held to serve any process of the said court placed in his hands for that purpose, and to attend the court in person or by deputy when so directed by the court. The court shall hold such sessions in the States and Territories mentioned in this act as shall be needful for the purposes thereof, and shall give notice of the times and places of the holding of such sessions by publication in both the English and Spanish languages, in one newspaper published at the capital of such State or Territory, once a week for two successive weeks, the last of which publications shall be not less than thirty days next preceding the times of the holding of such sessions, but such sessions may be adjourned from time to time without such publication. [*26 Stat. L. 854.*]

"By the treaties with Mexico of Feb. 2, 1848, art. 8, the treaty of Guadalupe Hidalgo (9 Stat. L., p. 115, of treaties), and of Dec. 30, 1853, art. 5 (10 Stat. L. 1035), the private property of Mexicans resident in the territory ceded thereby to the United States was guaranteed protection. The private titles to land rested upon Spanish and Mexican grants. By 1854, July 22, ch. 103, sec. 8 (10 Stat. L. 309), a method was provided for the investigation of such grants, looking to the confirmation of *bona fide* grants by Act of Congress. Less than a hundred grants were finally settled under that law in nearly thirty-seven years, and this Act (sec. 15) now repeats it." *Compiler's Note, 1 Supp. R. S. 519.*

Constitutionality.—"While claimants under grants made by Mexico or the Spanish authorities prior to the cession had no right to a judicial determination of their claims, Congress nevertheless might provide therefor if it chose to do so. * * * And it was for this purpose that the Act of March 3, 1891, was passed, establishing the Court of Private Land Claims for the settlement of claims against the United States to lands 'derived by the United States from the Republic of Mexico.'" *U. S. v. Coe, (1894) 155 U. S. 76.*

It is clearly within the authority of Congress to establish a court for determination of a claim against the United States to lands situated in a territory. *U. S. v. Coe, (1894). 155 U. S. 76.*

Power of political department.—"The duty of protecting imperfect rights of property under treaties, such as those by which territory was ceded by Mexico to the United States in 1848 and 1853, in existence at the time of such cessions, rests upon the political and not the judicial department of the government. To the extent only that Congress has vested them with authority to determine and protect such rights can courts exercise jurisdiction. When, therefore, a tribunal of limited jurisdiction is created by Congress to determine such rights of property, a party seeking relief must present for adjudication a case clearly within the act, or relief cannot be given." *U. S. v. Santa Fé, (1897) 165 U. S. 675; U. S. v. Sandoval, (1897) 167 U. S. 278.*

"Undoubtedly private rights of property within the ceded territory were not affected by the change of sovereignty and jurisdiction, and were entitled to protection whether the party had the full and absolute ownership of the land or merely an equitable interest therein which required some further act of government to vest in him a perfect title.

But the duty of providing the mode of securing these rights, and of fulfilling the obligations imposed upon the United States by the treaties, belonged to the political department of the government; and Congress might either itself discharge that duty or delegate it to the judicial department." *Rio Arriba Land, etc., Co. v. U. S.*, (1897) 167 U. S. 298.

Determination of claims prior to this Act.—"In respect of the adjustment and confirmation of claims under grants from the Mexican government in New Mexico and Arizona, Congress reserved to itself, prior to the passage of the Act of March 3, 1891, creating the Court of Private Land Claims, the determination of such claims. *Astiazaran v. Santa Rita Land, etc., Co.*, (1893) 148 U. S. 90; *Ainsa v. U. S.*, (1896) 161 U. S. 208." *U. S. v. Sandoval*, (1897) 167 U. S. 278.

Purpose of Act.—"The Court of Private Land Claims was specially organized by the Act of Congress approved March 3, 1891 (26 Stat. L. 854), ch. 539, for the purpose of hearing and determining claims of a particular character specially pointed out and described in the body of that Act. It has no other jurisdiction than that granted by Congress, being confined entirely to claims of the character mentioned in the Act." *Las Animas Land Grant Co. v. U. S.*, (1900) 179 U. S. 205.

Determination of question of public or private property.—"The main object of the Court of Private Land Claims is to ascertain and determine whether the land claimed as private property under the treaty is in fact private property, or, on the contrary, is public property. In the latter case, of course, a confirmation is refused; in the former case a confirmation is made if the claimant appears to have, as between himself and the United States, the right to it, but subject to the rights of others who are at liberty to

assert their superior title in the local courts." *U. S. v. Conway*, (1899) 175 U. S. 60.

United States ownership.—But the United States, in dealing with the claimant under Mexican grants which had come into the political control of our government by the treaty of Mexico, never made pretense that it was the owner of the lands so granted by Mexico. When, therefore, guided by the action of the tribunals which the government had established to pass upon the validity of these alleged grants, it issued a patent to the claimant, it was in the nature of a quitclaim, an admission that the rightful ownership had never been in the United States, but at the time of the cession it had passed to the claimant or to those under whom he claimed. *Beard v. Federy*, (1865) 3 Wall. (U. S.) 478; *Henshaw v. Bissell*, (1873) 18 Wall. (U. S.) 268; *Miller v. Dale*, (1875) 92 U. S. 478; *U. S. v. Conway*, (1899) 175 U. S. 60; *Adam v. Norris*, (1890) 103 U. S. 591.

Litigation over private titles.—"It was not the object of the Act to permit private titles to be litigated in the Court of Private Land Claims (although perhaps this may be done incidentally), but merely to determine if and to whom the United States ought to release its rights as sovereign proprietor of the soil." *U. S. v. Conway*, (1899) 175 U. S. 60.

Right of expatriated citizen to arbitration.—A citizen of the United States in 1889 who expatriated himself in that year and became a citizen of Mexico cannot invoke article XXI. of the treaty of Guadalupe Hidalgo for an arbitration as against an act of this government done while he was a citizen thereof. His claim to certain lands in the territory of New Mexico, and his remedy if he has any, are under the Act of March 3, 1891. (1891) 20 Op. Atty-Gen. 118.

SEC. 2. [United States attorney — interpreter.] That there shall also be appointed by the President, by and with the advice and consent of the Senate, a competent attorney, learned in the law, who shall when appointed be a resident and citizen of some State of the United States, to represent the United States in said court. Such attorney shall receive a compensation of three thousand five hundred dollars per year, payable monthly, and his necessary traveling and personal expenses while engaged in the discharge of his duties. And there shall be appointed by the said court a person who shall be when appointed a citizen and resident of some State of the United States, skilled in the Spanish and English languages, to act as interpreter and translator in said court, to attend all the sessions thereof, and to perform such other service as may be required of him by the court. Such person shall be entitled to a compensation of one thousand five hundred dollars per year, payable monthly, and his necessary traveling and personal expenses while engaged in the discharge of his duties. [26 Stat. L. 855.]

SEC. 3. [Notice of organization of court to be published.] That immediately upon the organization of said court the clerk shall cause notices thereof, and of the time and place of the first session thereof, to be published for a period of ninety days in one newspaper at the city of Washington and in one published at the capital of the State of Colorado and of the Territories of

Arizona and New Mexico. Such notices shall be published in both the Spanish and English languages, and shall contain the substance of this act. [26 Stat. L. 855.]

SEC. 4. [*Records of General Land Office and surveyors-general to be produced in court.*] That it shall be the duty of the Commissioner of the General Land Office of the United States, the surveyors-general of such Territories and States, or the keeper of any public records who may have possession of any records and papers relating to any land grants or claims for lands within said States and Territories in relation to which any petition shall be brought under this act, on the application of any person interested, or by the attorney of the United States, to safely transmit such records and papers to said court or to attend in person or by deputy any session thereof when required by said court, and produce such records and papers. [26 Stat. L. 856.]

SEC. 5. [*Testimony of persons now dead, when to be admitted.*] That the testimony which has been heretofore lawfully and regularly received by the surveyor-general of the proper Territory or State or by the Commissioner of the General Land Office, upon any claims presented to them, respectively, shall be admitted in evidence in all trials under this act when the person testifying is dead, so far as the subject matter thereof is competent evidence; and the court shall give it such weight as, in its judgment, under all the circumstances, it ought to have. [26 Stat. L. 856.]

The purpose of this section in permitting the use, subject to the restrictions and qualifications found in the Act, of the proceedings had before the surveyor-general was to allow all the proof then existing to be received, and to be given such weight as it was entitled to have. *U. S. v. Ortiz*, (1900) 176 U. S. 422.

Supplementary proceedings. — Under the provisions of this section supplementary proceedings which had been had before the surveyor-general may be introduced in evidence. The power of the surveyor-general is not ex-

hausted by the original investigation and report, and a succeeding incumbent of the office may take any additional testimony as to the genuineness or validity of the grant. The function of the surveyor-general, under the Act of 1854, ch. 103, was merely advisory, and until action by Congress had supervened it was not only the right but the duty of that official to hear additional evidence and transmit it for the consideration of Congress in a claim pending for confirmation. *U. S. v. Ortiz*, (1900) 176 U. S. 422.

SEC. 6. [*Claimants under unconfirmed grants — petitions — jurisdiction and procedure — notice — decree on default.*] That it shall and may be lawful for any person or persons or corporation, or their legal representatives, claiming lands within the limits of the territory derived by the United States from the Republic of Mexico and now embraced within the Territories of New Mexico, Arizona, or Utah, or within the States of Nevada, Colorado, or Wyoming by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm by virtue of the treaties of cession of said country by Mexico to the United States which at the date of the passage of this act have not been confirmed by act of Congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect, in every such case to present a petition, in writing, to the said court in the State or Territory where said land is situated and where the said court holds its sessions, but cases arising in the States and Territories in which the court does not hold regular sessions may be instituted at such place as may be designated by the rules of the court.

The petition shall set forth fully the nature of their claims to the lands, and particularly state the date and form of the grant, concession, warrant, or order of survey under which they claim, by whom made, the name or names of any person or persons in possession of or claiming the same, or any part

thereof, otherwise than by the lease or permission of the petitioner; and also the quantity of land claimed and the boundaries thereof, where situate, with a map showing the same, as near as may be, and whether the said claim has heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to any authorities constituted by law for the adjustment of land titles within the limits of the said territory so acquired, and by them reported on unfavorably or recommended for confirmation, or authorized to be surveyed or not; and pray in such petition that the validity of such title or claim may be inquired into and decided.

And the said court is hereby authorized and required to take and exercise jurisdiction of all cases or claims presented by petition in conformity with the provisions of this act, and to hear and determine the same, as in this act provided, on the petition and proofs in case no answer or answers be filed after due notice, or on the petition and the answer or answers of any person or persons interested in preventing any claim from being established, and the answer of the attorney for the United States where he may have filed an answer, and such testimony and proofs as may be taken; and a copy of such petition, with a citation to any adverse possessor or claimant, shall, immediately after the filing of the same, be served on such possessor or claimant in the ordinary legal manner of serving such process in the proper State or Territory, and in like manner on the attorney for the United States; and it shall be the duty of the attorney for the United States, as also any adverse possessor or claimant, after service of petition and citation as hereinbefore provided, within thirty days, unless further time shall, for good cause shown, be granted by the court, or a judge thereof, to enter an appearance, and plead, answer, or demur to said petition; and in default of such plea, answer, or demurrer being made within said thirty days, or within the further time which may have been granted as aforesaid, the court shall proceed to hear the cause on the petition and proofs, and render a final decree according to the provisions of this act, and in no case shall a decree be entered otherwise than upon full legal proof and hearing; and in every case the court shall require the petition to be sustained by satisfactory proofs, whether an answer or plea shall have been filed or not. [26 Stat. L. 856.]

Subject to other provisions.—All the powers so conferred upon the Court of Private Land Claims are subject to and controlled by section 13. U. S. v. Baca, (1902) 184 U. S. 659.

"The meaning of the words 'complete and perfect' is to be derived by considering the context, and not by segregating them from the previous part of the sentence, exacting that the claim must be one which the United States was bound to recognize and confirm by virtue of the treaty. These words are moreover controlled by the mandatory requirements of section 13." U. S. v. Santa Fe, (1897) 165 U. S. 675.

"Imperfect grant" defined.—An imperfect grant is one which requires a further exercise of the granting power to pass the fee of the lands. Territory v. Delinquent Tax List, (N. Mex. 1904) 76 Pac. Rep. 316.

Construction of grants.—"While, in construing these Spanish grants, owing to the loose manner in which they were made and the boundaries described, we have been extremely liberal, still we are bound to consider that grants of this description, as of all

others, must be construed favorably to the government, and the grantee is bound to show, not only the grant itself, but that the boundaries were fixed with reasonable certainty." Sena v. U. S., (1903) 189 U. S. 233; Slidell v. Grandjean, (1883) 111 U. S. 412; U. S. v. Oregon, etc., R. Co., (1896) 164 U. S. 526.

Ownership of imperfect grants.—"The title to an imperfect Spanish or Mexican grant was at the date of the treaty vested in the United States." Territory v. Delinquent Tax List, (N. Mex. 1904) 76 Pac. Rep. 316.

Claim for overplus.—A claim to a tract of land sued for as a *demasias* over which the owner of the grant had a right of purchase at the time of the treaty with Mexico is an imperfect claim and within the provisions of this section. Reloj Cattle Co. v. U. S., (1902) 184 U. S. 624.

Object of notice and effect of omission.—"The only object of requiring notice to be given the adverse possessors or claimants is to compel them to show the location and boundaries of their claims, and that they are not mere squatters or trespassers, but hold

the land under a grant from the United States, in which case, under section 14, such title from the United States to such other person 'shall remain valid notwithstanding such decree.' If, however, it appear that the petitioners admit that the adverse possessors or claimants do hold under grants from the United States, and that there are no disputed boundaries, there would appear to be no substantial reason for making them parties inasmuch as they could not be affected by the decree. The only consequence of an omission to serve on them a copy of the petition is an acknowledgment of their title and its boundaries." *U. S. v. Martinez*, (1902) 184 U. S. 441.

Every adverse possessor or claimant a party. — "The provisions of section 6 of the Act, which relate to claims for confirmation

of imperfect and incomplete titles, manifestly import that every adverse possessor or claimant should be made a party defendant." *U. S. v. Green*, (1902) 185 U. S. 256.

When adverse parties may be brought in. — "Congress intended that in a proceeding brought in due time to settle the validity of an alleged Spanish or Mexican grant, the United States might at any stage of such pending litigation apply to the Court of Private Land Claims * * * to have brought into the case adverse claimants who had not been made parties defendant by the petitioner, in order that such parties might be afforded an opportunity to be heard, and the Court of Private Land Claims be aided in reaching a just decision." *U. S. v. Green*, (1902) 185 U. S. 256.

SEC. 7. [*Proceedings after petition — hearing and determination — decree.*] That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe-Hidalgo, on the second day of February, in the year of our Lord, eighteen hundred and forty-eight, or the treaty concluded between the same powers at the city of Mexico, on the thirtieth day of December, in the year of our Lord, eighteen hundred and fifty-three, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed. [26 Stat. L. 857.]

Rules of court of law. — "In an investigation of this kind this court is not limited to the dry, technical rules of a court of law, but may inquire and establish that which equitably was the land granted by the government of Mexico. It was doubtless the purpose of Congress by this enactment to provide a tribunal which should examine all claims and titles and that should, so far as was practicable in conformance with equitable rules, finally settle and determine the rights of all claimants." *Ely v. U. S.*, (1898) 171 U. S. 220.

Location of grant. — "It was not within the power of the court to locate grants, but if a location had been made and there were facts enough to nail it to the ground and

determine its true boundaries that might be done." *Arivaca Land, etc., Co. v. U. S.*, (1902) 184 U. S. 649. See also *Ely v. U. S.*, (1898) 171 U. S. 220.

Grant for portion of larger tract. — "The powers of the Court of Private Land Claims are not narrow and restricted, and when it finds that there is a valid grant for a certain number of acres within the out-boundaries of a larger tract, it may inquire, and if it finds sufficient reasons for determining the true boundaries of the tract that was granted, it can so prescribe them and sustain the claim to that extent, referring to the land department the final and absolute surveys thereof." *Ely v. U. S.*, (1898) 171 U. S. 220.

SEC. 5. [Claimants under completed title — hearing and determination — confirmation and effect.] That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases for a confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

If in any such case, a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States, and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person as between himself and other claimants or persons, in respect of any such lands, shall be in any manner affected thereby.

It shall be lawful for and the duty of the head of the Department of Justice, whenever in his opinion the public interest or the rights of any claimant shall require it, to cause the attorney of the United States in said court to file in said court a petition against the holder or possessor of any claim or land in any of the States or Territories mentioned in this act who shall not have voluntarily come in under the provisions of this act, stating in substance that the title of such holder or possessor is open to question, or stating in substance that the boundaries of any such land, the claimant or possessor to or of which has not brought the matter into court, are open to question, and praying that the title to any such land, or the boundaries thereof, if the title be admitted, be settled and adjudicated; and thereupon the court shall, on such notice to such claimant or possessor as it shall deem reasonable, proceed to hear, try, and determine the questions stated in such petition or arising in the matter, and determine the matter according to law, justice, and the provisions of this act, but subject to all lawful rights adverse to such claimant or possessor, as between such claimant and possessor and any other claimant or possessor, and subject in this respect to all the provisions of this section applicable thereto. [26 Stat. L. 857.]

What determinations may be had and by whom. — "The United States, at their election, may have the validity of any Mexican grant, whether complete or incomplete, determined by the Court of Private Land Claims, so far as concerns the interest of the United States; and proceedings to establish against the United States private titles claimed under incomplete Mexican grants are within the exclusive jurisdiction of that court; but the private holder of any complete and perfect Mexican grant may, but is not obliged to, have its validity as against the United States determined by that court; and no rights of private persons as between themselves can be determined by proceedings under this Act." *Ainsa v. New Mexico, etc., R. Co., (1899) 175 U. S. 76.*

Asserting claims in other courts. — "A grant of land in New Mexico, which was complete and perfect before the cession of New Mexico to the United States * * * may be asserted as against any adverse private claimant in the ordinary courts of justice, * * * although the grant had neither been confirmed nor rejected by Congress and no proceedings for its confirmation were pending before Congress or before the surveyor-general at the time of commencement of suit." *Ainsa v. New Mexico, etc., R. Co., (1899) 175 U. S. 76.*

Determination of priority of grant. — "The duty of the court, under section 8, 'to hear, try, and determine the validity of the same' (the grant), and the right of the claimant thereto, its extent, location, and boundaries,'

is discharged by determining the extent and validity of the grant as between the United States and the grantee, and it is not incumbent upon the Court of Private Land Claims to determine the priority of right as between him and another grantee. Such private rights are carefully preserved in the 8th and 13th

sections." U. S. v. Conway, (1899) 175 U. S. 60.

"The private rights of third parties are not affected by any proceeding or decree under this Act." U. S. v. Chaves, (1895) 159 U. S. 452.

SEC. 9. [*Appeal to Supreme Court — hearing and decree — notice to Attorney-General.*] That the party against whom the court shall in any case decide — the United States, in case of the confirmation of a claim in whole or in part, and the claimant, in case of the rejection of a claim, in whole or in part — shall have the right of appeal to the Supreme Court of the United States, such appeal to be taken within six months from date of such decision, and in all respects to be taken in the same manner and upon the same conditions, except in respect of the amount in controversy, as is now provided by law for the taking of appeals from decisions of the circuit courts of the United States. On any such appeal the Supreme Court shall retry the cause, as well the issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below, and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme Court thereon shall be final and conclusive. Should no appeal be taken as aforesaid the decree of the court below shall be final and conclusive.

Upon the rendition of any judgment of the court confirming any claim, it shall be the duty of the attorney of the United States to notify the Attorney-General, in writing of such judgment, giving him a clear statement of the case and the points decided by the court, which statement shall be verified by the certificate of the presiding judge of said court; and in any case in which such statement shall not be received by the Attorney-General within sixty days next after the rendition of such judgment, the right of appeal on the part of the United States shall continue to exist until six months next after the receipt of such statement. And if the Attorney-General shall so direct, it shall be the duty of the clerk of the court to transmit the record of any cause in which final judgment has been rendered to the Attorney-General for his examination. In all cases it shall be the duty of the Attorney-General to instruct the attorney for the United States what further course to pursue and whether or not an appeal shall be taken. [*26 Stat. L. 858.*]

Constitutional right of Congress to provide for appeals. — "As wherever the United States exercise the power of government, whether under specific grant or through the dominion and sovereignty of plenary authority as over the territories, * * * that power includes the ultimate executive, legislative, and judicial power, it follows that the judicial action of all inferior courts established by Congress may, in according with the Constitution, be subjected to the appellate jurisdiction of the supreme judicial tribunal of the government. There has never been any question in regard to this as applied to territorial courts, and no reason can be perceived for applying a different rule to the adjudications of the Court of Private Land Claims over property in the territories." U. S. v. Coe, (1894) 155 U. S. 76.

As equity cases. — "Causes in the Court of Private Land Claims are in effect equity causes and brought to the Supreme Court by

appeal." U. S. v. Coe, (1894) 155 U. S. 76.

United States as party to appeal. — "While the government may have no interest in the result of the litigation, it is a proper and necessary party to the suit, and it would be a strange conclusion to hold that it could not follow the litigation through all the courts which are given jurisdiction of the case. Upon such appeal the government is at liberty to show that the petitioner is not entitled to a confirmation of his claim." U. S. v. Conway, (1899) 175 U. S. 60.

Allowance of appeal by associate justice. — The provision of this section with regard to the manner and conditions upon which appeals may be taken permit, under R. S. sec. 999, the allowance of an appeal by one of the associate justices of the Court of Private Land Claims. U. S. v. Pena, (1890) 175 U. S. 500.

Delay of notice by U. S. attorney. — Where

the United States attorney delays giving the notice to the attorney-general provided in this section, it is sufficient to excuse the delay that the matter was called to the attention of one of the justices of the trial court, who, by allowing the appeal, approved the action of the attorney. *U. S. v. Pena*, (1899) 175 U. S. 500.

Affirmed finding of lack of evidence. — A

finding by the Court of Claims that the evidence with regard to the settlement, improvement, etc., of a grant was so vague, contradictory, and uncertain as to be almost wholly wanting, will be adopted by the Supreme Court on appeal in the absence of clear evidence to the contrary. *Sena v. U. S.*, (1903) 189 U. S. 233; *U. S. v. Pendell*, (1902) 185 U. S. 189.

SEC. 10. [*Final decree of confirmation to be certified to Commissioner of General Land Office — survey and patent.*] That whenever any decision of confirmation shall become final, the clerk of the court in which the final decision shall be had shall certify that fact to the Commissioner of the General Land Office, with a copy of the decree of confirmation, which shall plainly state the location, boundaries, and area of the tract confirmed. The said Commissioner shall thereupon without delay cause the tract so confirmed to be surveyed at the cost of the United States. When any such survey shall have been made and returned to the surveyor-general of the respective Territory or State, and the plat thereof completed, the surveyor-general shall give notice that same has been done, by publication once a week, for four consecutive weeks in two newspapers, one published at the capital of the Territory or State and the other (if any such there be) published near the land so surveyed, such notices to be published in both the Spanish and English languages; and the surveyor-general shall retain such survey and plat in his office for public inspection for the full period of ninety days from the date of the first publication of notice in the newspaper published at the capital of the Territory or State.

If, at the expiration of such period, no objection to such survey shall have been filed with him, he shall approve the same and forward it to the Commissioner of the General Land Office. If, within the said period of ninety days, objections are made to such survey, either by any party claiming an interest in the confirmation or by any party claiming an interest in the tract embraced in the survey or any part thereof, such objection shall be reduced to writing, stating distinctly the interest of the objector and the grounds of his objection, and signed by him or his attorney, and filed with the surveyor-general, with such affidavits or other proofs as he may produce in support of his objection. At the expiration of the said ninety days the surveyor-general shall forward such survey, with the objections and proofs filed in support of or in opposition to such objections, and his report thereon, to the Commissioner of the General Land Office.

Immediately upon receipt of any such survey, with or without objections thereto, the said Commissioner shall transmit the same with all accompanying papers, to the court in which the final decision was made for its examination of the survey and of any objections and proofs that may have been filed, or shall be furnished; and the said court shall thereupon determine if the said survey is in substantial accordance with the decree of confirmation. If found to be correct, the court shall direct its clerk to indorse upon the face of the plat its approval. If found to be incorrect, the court shall return the same for correction in such particulars as it shall direct. When any survey is finally approved by the court, it shall be returned to the Commissioner of the General Land Office, who shall as soon as may be cause a patent to be issued thereon to the conferee. One half of the necessary expenses of making the survey and plat provided for in this section, and in respect of which a patent shall be ordered to be issued, shall be paid by the claimant or patentee, and shall be a lien on said land, which may be enforced by the sale of so

much thereof as may be necessary for that purpose, after a default of payment thereof for six months next after the approval of such survey and plat; and no patent shall issue until such payment. [26 Stat. L. 858.]

Publication of notice of survey. See Act of June 6, 1900, ch. 791, *infra*, p. 65.

Authority of surveyor-general. — "The only authority given by this Act to the surveyor-general of a territory or state is by section 10, which requires him after a final decree of confirmation by the Court of Private Land Claims, and under the direction of the commissioner of the general land office, to make a survey and return it to said commissioner by whom it is to be transmitted to that court

for its approval or correction." *Ainsa v. New Mexico, etc., R. Co.* (1899) 175 U. S. 76.

What constitutes confirmation. — "The two Acts, the decree fixing the validity of the grant and the approval of the survey fixing its extent, constitute the confirmation. * * * These two functions are vested exclusively in the land court, and until it performs them the title to an imperfect grant remains vested in the United States." *Territory v. Delinquent Tax List*, (N. Mex. 1904) 76 Pac. Rep. 316.

SEC. 11. [*Claim of city, town, or village.*] That the provisions of this act shall extend to any city lot, town lot, village lot, farm lot, or pasture lot claimed directly or mediately under any grant which may be entitled to confirmation by the United States, for the establishment of a city, town, or village, by the Spanish or Mexican Government, or the lawful authorities thereof; but the claim for said city, town, or village shall be presented by the corporate authorities of the said city, town, or village; or where the land upon which said city, town, or village is situated was originally granted to an individual the claim shall be presented by or in the name of said individual or his legal representatives. [26 Stat. L. 859.]

Statutory requirements necessary. — "Although the Act of 1891, in section 11, authorized a town presenting a claim for a grant to represent the claims of lot holders to lots within the town, this provision does not override the general requirements of the statute as to the nature of the claim to title, which the court is authorized to confirm." *U. S. v. Santa Fé*, (1897) 165 U. S. 675; *U. S. v. Sandoval*, (1897) 167 U. S. 278.

Lands outside town. — The Court of Private Land Claims is not authorized to confirm the

title to a town of lands lying outside it which were permitted to be used by the town, but which remained in all particulars subject to the control of the government of the country. *U. S. v. Santa Fé*, (1897) 165 U. S. 675.

Title of unallotted lands. — "As to all unallotted lands, within exterior boundaries, where towns or communities were sought to be formed, the title remained in the government for such disposition as it might see proper to make." *Rio Arriba Land, etc., Co. v. U. S.*, (1897) 167 U. S. 298.

SEC. 12. [*Limitation of time — powers of judges in vacation — powers of court as to order, papers, witnesses, contempts.*] That all claims mentioned in section six of this act which are by the provisions of this act authorized to be prosecuted shall, at the end of two years from the taking effect of this act, if no petition in respect to the same shall have then been filed as hereinbefore provided, be deemed and taken, in all courts and elsewhere, to be abandoned and shall be forever barred: *Provided*, That in any case where it shall come to the knowledge of the court that minors, married women, or persons non compos mentis are interested in any land claim or matter brought before the court it shall be its duty to appoint a guardian ad litem for such persons under disability and require a petition to be filed in their behalf, as in other cases, and if necessary to appoint counsel for the protection of their rights. The judges, respectively, of said court are hereby authorized in all cases arising under this act to grant in vacation all orders for taking testimony, and otherwise to hear and dispose of interlocutory motions not affecting the substantial merits of a case. And said court shall have and possess all the powers of a circuit court of the United States in preserving order, compelling the production of books, papers, and documents, the attendance of witnesses, and in punishing contempts. [26 Stat. L. 859.]

Laches in asserting title.— In the establishment of a title as of a certain date, possession subsequent to that date is of no value, but considering the title to have been sufficient as of that date, failure to assert such title within a reasonable time thereafter opens the case to the defense of laches. *Sena v. U. S.*, (1903) 189 U. S. 233.

Abandoned grant.— The Court of Private Land Claims cannot confirm a Spanish grant which had been abandoned nine years before the treaty with Mexico, and where the grantee or his descendants had not been in possession since the treaty and for more than fifty years

no attempt had been made to assert the title. *Sena v. U. S.*, (1903) 189 U. S. 233.

Parties coming into pending proceeding after limited time.— "It was not the purpose of Congress to deprive the Court of Private Land Claims of power to adjudicate upon claims asserted by defendants, during the pendency of a lawful proceeding to obtain an adjudication respecting the validity of an alleged Mexican grant, even though such defendants were made parties or filed claims for affirmative relief after the period limited for the institution of an original proceeding to obtain confirmation of a claim of title." *U. S. v. Green*, (1902) 185 U. S. 256.

SEC. 13. [*Rules of decision — claims allowed — limit of amount — effect of allowance or confirmation.*] That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound upon the principles of public law, or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.

Second. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.

Third. No allowance or confirmation of any claim shall confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, unless the grant claimed effected the donation or sale of such mines or minerals to the grantee, or unless such grantee has become otherwise entitled thereto in law or in equity; but all such mines and minerals shall remain the property of the United States, with the right of working the same, which fact shall be stated in all patents issued under this act. But no such mine shall be worked on any property confirmed under this act without the consent of the owner of such property until specially authorized thereto by an act of Congress hereafter passed.

Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress, or under its authority.

Fifth. No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be reserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands.

Sixth. No confirmation of or decree concerning any claim under this act shall in any manner operate or have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims, or lands, or their disposition, otherwise than as is in this act provided.

Seventh. No confirmation in respect of any claims or lands mentioned in section six of this act or in respect of any claim or title that was not complete and perfect at the time of the transfer of sovereignty to the United States as referred to in this act, shall in any case be made or patent issued for a greater quantity than eleven square leagues of land to or in the right of any one original grantee or claimant, or in the right of any one original grant to two or more persons jointly, nor for a greater quantity than was authorized by the respective laws of Spain or Mexico applicable to the claim.

Eighth. No concession, grant, or other authority to acquire land made upon any condition or requirement, either antecedent or subsequent, shall be admitted or confirmed unless it shall appear that every such condition and requirement was performed within the time and in the manner stated in any such concession, grant, or other authority to acquire land. [*26 Stat. L. 860.*]

"Title lawfully and regularly derived."— "This court has construed the language there used to mean not only that the title was lawfully and regularly derived, but that, if the grant was not complete and perfect, the claimant could by right and not by grace have demanded that it should be made perfect by the former government had the territory not been acquired by the United States. *Ainsa v. U. S.*, (1896) 161 U. S. 208; *U. S. v. Santa Fé*, (1897) 165 U. S. 675; *U. S. v. Sandoval*, (1897) 167 U. S. 278." *Bergere v. U. S.*, (1897) 168 U. S. 66.

"An inchoate claim which could not have been asserted as an absolute right against the government of either Spain or Mexico, and which was subject to the uncontrolled discretion of Congress, is clearly not within the purview of the Act of March 3, 1891, creating the Court of Private Land Claims * * * and, therefore, is beyond the reach of judicial cognizance." *U. S. v. Santa Fé*, (1897) 165 U. S. 675. See also *U. S. v. Sandoval*, (1897) 167 U. S. 278.

Right to demand completion of imperfect title.—"Under the Act of March 3, 1891, it must appear, in order to the confirmation of a grant by the Court of Private Land Claims, not only that the title was lawfully and regularly derived, but that if the grant were not complete and perfect the claimant could by right and not by grace have demanded that it should be made perfect by the former government had the territory not been acquired by the United States." *Ainsa v. U. S.*, (1896) 161 U. S. 208. See also *U. S. v. Santa Fé*, (1897) 165 U. S. 675; *U. S. v. Sandoval*, (1897) 167 U. S. 278.

"The difference between the Act of 1891 and the California Act of 1851: * * * accentuates the intention of Congress to confine the authority conferred by the later act to narrower limits than those fixed by the Act of 1851. The Act of 1851 authorized the adjudication of claims to land by virtue of any 'right' or 'title' derived from the Spanish government, and conferred the power in express language on the board and court to presume a grant in favor of a town. The Act of 1891 not only entirely omits authority to invoke this presumption, but as we have seen excludes by express terms any claim, the completion of which depended upon the mere grace or favor of the government

of Spain or Mexico, and of the United States as the successor to the rights of these governments." *U. S. v. Santa Fé*, (1897) 165 U. S. 675. See also *U. S. v. Sandoval*, (1897) 167 U. S. 278.

Title derived from territorial government.—"The lands covered by the grant being public lands of the nation, and not being subject to grant by the authorities of the territory of New Mexico, it follows that the title upon which the claimant relies vested no right in him, and was clearly not within the purview of the Act of Congress conferring jurisdiction on the Court of Private Land Claims; for obviously it cannot be in reason held that a title to land derived from a territory which the territorial authorities did not own, over which they had no power of disposition, was regularly derived from either Spain or Mexico or a state of the Mexican nation." *Hayes v. U. S.*, (1898) 170 U. S. 637.

Grant by state in rebellion.—A grant by a Mexican state in its own name and in the name of the Mexican government, made at a time when the state was in rebellion against the nation, is invalid, especially when not ratified by the nation. *U. S. v. Coe*, (1898) 170 U. S. 681.

Authority of granting officer necessary.—"This manifest limitation upon the power of the court in passing upon the validity of an alleged complete grant requires that the court shall not adjudge in favor of validity unless satisfied from the inherent evidence contained in the grant or otherwise of an essential prerequisite to validity, viz., the authority of the granting officer or body to convey the public domain." *Hayes v. U. S.*, (1898) 170 U. S. 637.

Presumption of power to grant.—"We are not to presume, that because certain officials made a grant, therefore it was the act of the Mexican government, and to be sustained. It must appear that the officials did have the power, and we are not justified in resting upon any legal presumption of the existence of power from the fact of its exercise." *Ely v. U. S.*, (1898) 171 U. S. 220.

"Where the officer who assumed to convey the public domain had no authority *ex officio* to do so, such authority cannot be presumed from the mere fact of the conveyance in the absence of other evidence." *Mitchell v. Furman*, (1901) 180 U. S. 432.

Presumed authority to grant under vague statute.—"When the statutes and ordinances defining the powers and duties of an officer are somewhat indefinite and general in their terms, and that officer was in the habit of exercising the same power as was exercised in the case presented, and such exercise of power was not questioned by the authorities of Mexico, and grants purporting to have been made by him were never challenged, there is reason to believe that the true construction of the statutes or ordinances supports the existence of the power." *Ely v. U. S.*, (1898) 171 U. S. 220.

Presumption of delegated power to grant.—"It may be that in some particular period of those disturbed times, and up to 1846, the supreme executive of the Mexican nation exercised arbitrary and irresponsible power and granted the public lands according to his own views of what was proper and needful for the nation, and upon occasion delegated such power to a governor; but the exercise of that kind of power was in violation of the ordinary and general laws which had been adopted by the nation; and no presumption that the supreme executive had delegated his power to a governor or political chief of a province or state can be indulged for the purpose of upholding a grant of land made by the governor in violation of the constitution or laws which had heretofore been adopted or passed." *Whitney v. U. S.*, (1901) 181 U. S. 115.

Satisfactory evidence of authoritative title.—"The court is required to be satisfied, not simply as to the regularity in form, but it is made essential before a grant can be held legally valid that it must appear that the title was lawfully and regularly derived, which imports that the court must be satisfied from all the evidence that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified." *Hayes v. U. S.*, (1898) 170 U. S. 637. See also *Whitney v. U. S.*, (1901) 181 U. S. 114; *Mitchell v. Furman*, (1901) 180 U. S. 431; *U. S. v. Elder*, (1900) 177 U. S. 104; *Faxon v. U. S.*, (1898) 171 U. S. 244; *Ely v. U. S.*, (1898) 171 U. S. 220; *Zia v. U. S.*, (1897) 168 U. S. 198.

Necessary evidence.—"The command of the statute is not that the United States, when an alleged Mexican title is presented for confirmation, shall be put to the burden of showing that the title in question is not genuine, but that the evidence presented in favor of the asserted title shall be of such persuasive and preponderating force as to convince the court that the title is real, and besides possesses the legal attributes which the statute requires as essential to confirmation." *U. S. v. Ortiz*, (1900) 176 U. S. 422.

Presumption of title.—"The statute authorizes no presumption in favor of the genuineness of a title, from the mere fact that the claimant for confirmation presents a paper which is asserted to be a grant from a Mexican official." *U. S. v. Ortiz*, (1900) 176 U. S. 422.

Presumption against genuineness of grant.

—"The burden of proof to sustain a Spanish grant rests upon the claimants, and the failure to show that the official archives contained evidence that the grant had been made and the fact of the production of the original title papers solely from the custody and possession of the grantee were circumstances so suspicious as to create a presumption against the genuineness of the grant, calling for the production by the grantee of more than slight evidence to overthrow the presumption." *U. S. v. Ortiz*, (1900) 176 U. S. 422. See also *Berreyesa v. U. S.*, (1876) 154 U. S. 623.

Possession since treaty.—"The provisions of the first subdivision of this section preclude the idea that possession since the date of the treaty, however exclusive and notorious, can be regarded as an element going to make up a perfect title. *Crespin v. U. S.*, (1897) 168 U. S. 208; *Hays v. U. S.*, (1899) 175 U. S. 248; *Hayes v. U. S.*, (1898) 170 U. S. 637; *Sena v. U. S.*, (1903) 189 U. S. 233.

Destruction of record and long possession as evidence of title.—"Where evidence is presented that a recording grant of the Spanish government was destroyed by the American soldiers, that, together with uninterrupted possession for over one hundred and ten years, will be deemed sufficient evidence of title. *U. S. v. Pendell*, (1902) 185 U. S. 189.

Possession interrupted by war.—"It is very likely, as suggested, that during the war between Mexico and the United States the possession was in some respects interrupted, but such interruption cannot be adjudged fatal to the validity of the grant." *U. S. v. Pena*, (1899) 175 U. S. 500.

The pasturing of cattle as evidence of an adverse possession upon which to base a claim of title is a fact of very slight weight when applied to cases arising under alleged grants of land of the nature herein treated. *Bergere v. U. S.*, (1897) 168 U. S. 66; *Whitney v. U. S.*, (1897) 167 U. S. 529.

Effect of confirmation of similar grants.—"The fact that grants similar to the one claimed may have been confirmed by Congress or received the approval of Mexican authority is not decisive in favor of recognizing its validity. *Crespin v. U. S.*, (1897) 168 U. S. 208.

"It is also said that Congress has repeatedly confirmed similar grants; but the fact that Congress may have thus disposed of the public lands in its discretion cannot operate to justify the Court of Private Land Claims in adjudication of a case not coming within the terms of the law of its creation." *Rio Arriba Land, etc., Co. v. U. S.*, (1897) 167 U. S. 298.

Burden of proof.—"The law casts primarily upon the applicant for confirmation the duty of tendering such proof as to the existence, regularity, and archive record of the grant, as well as his connection with it, such as possession, ownership, and other related incidents, of sufficient probative force to create a just inference as to the reality and validity of the grant, before the burden of proof, if at all, can be shifted from the claimant to the United States." *U. S. v. Ortiz*, (1900) 176 U. S. 422.

Burden of proof prior to Act.—"This burden of proof resting upon the grantee had been frequently declared by this court prior to the enactment of the law of 1891, to be essentially necessitated by the situation and as the sole means of avoiding the danger of imposing upon the United States by means of forged or fabricated grants. *U. S. v. Teschmaker*, (1859) 22 How. (U. S.) 392; *U. S. v. Pico*, (1859) 22 How. (U. S.) 406; *Fuentes v. U. S.*, (1859) 22 How. (U. S.) 443; *Luco v. U. S.*, (1859) 23 How. (U. S.) 515; *U. S. v. Bolton*, (1859) 23 How. (U. S.) 341; *Palmer v. U. S.*, (1860) 24 How. (U. S.) 125; *U. S. v. Knight*, (1861) 1 Black (U. S.) 227; *U. S. v. Neleigh*, (1861) 1 Black (U. S.) 298; *U. S. v. Vallejo*, (1861) 1 Black (U. S.) 541; *White v. U. S.*, (1863) 1 Wall. (U. S.) 660; *Romero v. U. S.*, (1863) 1 Wall. (U. S.) 721; *Pico v. U. S.*, (1864) 2 Wall. (U. S.) 279; *Peralta v. U. S.*, (1865) 3 Wall. (U. S.) 434." *U. S. v. Ortiz*, (1900) 176 U. S. 422.

"By the word 'just,' in this connection, is meant only a title which is good upon its face, or not manifestly frivolous, not one which shall ultimately turn out to be valid." *U. S. v. Conway*, (1899) 175 U. S. 60.

Effect of confirmation of Indian claim.—"That the Indian claim or title is a 'just and unextinguished' one, within the meaning of sec. 13, subdivision 2, of the Act, is shown by the fact that such title was confirmed by Congress." *U. S. v. Conway*, (1899) 175 U. S. 60.

Reservation of mineral lands.—"This provision makes it still plainer that so far as regards mineral lands there was no intention after the passage of the Act of 1891 that they should be reserved by a mere claim in a Mexican grant of ordinary land." *Lockhart v. Johnson*, (1901) 181 U. S. 524.

Intent of subdivision four.—"The manifest intent of Congress appears to have been that with any land, of the right to which Congress, in the exercise of its lawful discretion, had itself assumed the decision, the Court of Private Land Claims should have nothing to do. The whole jurisdiction conferred upon that court is to confirm or reject claims presented to it coming within the Act. All the powers conferred upon it are incident to the exercise of that jurisdiction. When it has no jurisdiction to confirm or reject it has no authority to inquire into or pass upon the case beyond the decision of the question of jurisdiction. The peremptory declaration of Congress that 'no claim shall be allowed for any land, the right to which has hitherto been lawfully acted upon and decided by Congress,' necessarily prohibits the court from passing upon the merits of any such claim." *U. S. v. Baca*, (1902) 184 U. S. 659.

Title confirmed by Congress.—"When the title has once been confirmed by Congress it should be respected by the Court of Private Land Claims as if it were a confirmation by the court itself, and conflicting claimants are at liberty to resort to ordinary remedies at law or in equity, according to the nature of the claim." *U. S. v. Conway*, (1899) 175 U. S. 60.

Confirmation of grant for lands already granted.—"Under these provisions, if the court were to confirm a grant for lands already granted, such confirmation would be void, as nothing is better settled by this court than that a patent issued by the United States to lands which they do not own is a simple nullity." *U. S. v. Conway*, (1899) 175 U. S. 60.

Lands within confirmed grant.—Lands which are within the limits of a grant which had been confirmed by Congress and a patent issued therefor cannot be the subject of a claim before the Court of Private Land Claims. *U. S. v. Conway*, (1899) 175 U. S. 60; *Real De Dolores Del Oro v. U. S.*, (1899) 175 U. S. 71.

Rights determined by Congress prior to Act.—"Where the rights of claimants under land grants have been lawfully acted upon and decided by Congress, prior to the passage of the Act of 1891, it is a case directly within the fourth subdivision of this section, and the Court of Private Land Claims has no jurisdiction to determine the rights of the parties. With regard to the grant in this case, Congress had allowed to the claimants a certain portion of the land claimed, and the claimants thereafter applied to the Court of Private Land Claims for an adjudication as to the remainder. *Las Animas Land Grant Co. v. U. S.*, (1900) 179 U. S. 201.

Conditional right to overplus.—"The cession did not increase rights. That which was beyond challenge before remained so after. That which was subject to challenge before did not become a vested right after. No duty rests on this government to recognize the validity of a grant to any area of greater extent than was recognized by the government of Mexico. If that government had a right * * * to compel payment for an overplus, or resell such overplus to a third party, then this government is under no moral or legal obligations to consider such overplus as granted, but may justly and equitably treat the grant as limited to the area purchased and paid for." *Ely v. U. S.*, (1898) 171 U. S. 220.

Jurisdiction upon performed conditions only.—"This court 'is a mere creature of statute with prescribed and limited powers. It has no general equity jurisdiction. It can confirm a grant made upon condition only when such condition was performed. It is not under the statute at liberty to treat anything as equivalent to performance. Cases in which there was no performance of the conditions of the grant are cases which must be considered as reserved by Congress for further action on its part.'" *Cessna v. U. S.*, (1898) 169 U. S. 165.

Unperformed conditions.—"The owner of the *cabida legal* did not have a vested property interest in the *demasias*, but, under circumstances, had the preference in acquiring it, if he so desired; and claims to overplus the conditions to acquiring which were unperformed were not open to confirmation by the court." *Arivaca Land, etc. Co. v. U. S.*, (1902) 184 U. S. 653; *Reloj Cattle Co. v. U. S.*, (1902) 184 U. S. 624; *Ainsa v. U. S.*, (1902) 184 U. S. 639.

Performance of condition to grant prevented by Mexican government. — The Court of Private Land Claims is not vested with power to confirm a grant made upon any condition or requirement, and the fact that a condition attached to a grant was not performed because the performance was unlawfully prevented by the Mexican authorities will not authorize that court to consider that

the performance of the condition was waived and that the title had become absolute. Even if there are no other objections to the proceeding, the admitted fact that the conditions and requirements of the grant were never performed is sufficient to justify a ruling of the court dismissing the petition. *Cessna v. U. S.*, (1898) 169 U. S. 165.

SEC. 14. [*Money judgment against United States where lands decreed to claimant have been granted by United States.*] That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid, notwithstanding such decree, and upon proof being made to the satisfaction of said court of such sale or grant, and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of betterments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment, when found, shall be a charge on the Treasury of the United States. Either party deeming himself aggrieved by such judgment may appeal in the same manner as provided herein in cases of confirmation of a Spanish or Mexican grant. For the purpose of ascertaining the value and amount of such lands, surveys may be ordered by the court, and proof taken before the court, or by a commission appointed for that purpose by the court. [*26 Stat. L. 861.*]

To what cases applicable. — "This section applies only to cases where such lands have been sold or granted as public lands for a consideration which equitably belongs to the owner of the land, and not to cases where the government has merely released its interest to one apparently holding a good title under a Spanish or Mexican grant, which subsequently turns out to be invalid by reason of an older or better title. In the one case there is a moral obligation on the part of the government to protect the real owner. In the other there is a mere quitclaim of its rights to one who apparently has a better title thereto. There is no warranty, direct or indirect, that the title is a valid one, and no reason why the government should be called upon to protect it." *Real De Dolores Del Oro v. U. S.*, (1899) 175 U. S. 71.

Necessity of claim in petition. — An indemnity under this section cannot be sus-

tained where no such claim is made by the petition. *Real De Dolores Del Oro v. U. S.*, (1899) 175 U. S. 71.

Unexplained delay. — A claimant may not wait an unlimited time and then upon a simple allegation that certain lands within the grant had been disposed of recover their value. He is bound to act with promptness, and if a long delay has occurred to explain it with the proper averments. *U. S. v. Martinez*, (1902) 184 U. S. 441.

Upon a petition for value, filed seven years after the original petition for confirmation, a decree against the United States cannot be entered upon a single allegation that certain parcels had been conveyed and patented by the United States, without showing some excuse for the delay in presenting the petition, or some diligence in ascertaining the real facts. *U. S. v. Martinez*, (1902) 184 U. S. 441.

SEC. 15. [*Investigation by Surveyor-General repealed.*] That section eight of the act of Congress approved July twenty-second, eighteen hundred and fifty-four, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes," and all acts amendatory or in extension thereof, or supplementary thereto, and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed. [*26 Stat. L. 861.*]

Repeal of prior acts. — "The effect of these provisions of the Act of 1891 is that all prior acts of Congress providing for the assertion, whether in a judicial tribunal or before a surveyor-general and Congress, of either com-

plete or incomplete Mexican grants, are repealed, except as to claims previously acted upon and decided by Congress or under its authority." *Ainsa v. New Mexico, etc., R.* (o., (1899) 175 U. S. 76.

SEC. 16. [*Recognition in future township surveys of adverse possession of limited tracts — review and issue of patents by Commissioner of General Land Office.*] That in township surveys hereafter to be made in the Territories of New Mexico, Arizona, and Utah, and in the States of Colorado, Nevada, and Wyoming if it shall be made to appear to the satisfaction of the deputy surveyor making such survey that any person has, through himself, his ancestors, grantors, or their lawful successors in title or possession, been in the continuous adverse actual bona fide possession of any tract of land or in connection therewith of other lands, all together not exceeding one hundred and sixty acres in such township for twenty years next preceding the time of making such survey, the deputy surveyor shall recognize and establish the lines of such possession and make the subdivision of the adjoining lands in accordance therewith. Such possession shall be accurately defined in the field-notes of the survey and delineated on the township plat, with the boundaries and area of the tract as a separate legal subdivision. The deputy surveyor shall return with his survey the name or names of all persons so found to be in possession, with a proper description of the tract in the possession of each as shown by the survey, and the proofs furnished to him of such possession.

Upon receipt of such survey and proofs the Commissioner of the General Land Office shall cause careful investigation to be made in such manner as he shall deem necessary for the ascertainment of the truth in respect of such claim and occupation, and if satisfied upon such investigation that the claimant comes within the provisions of this section, he shall cause patents to be issued to the parties so found to be in possession for the tracts respectively claimed by them: *Provided, however,* That no person shall be entitled to confirmation of, or to patent for, more than one hundred and sixty acres in his own right by virtue of this section: *And provided further,* That this section shall not apply to any city lot, town lot, village lot, farm lot, or pasture lot held under a grant from any corporation or town the claim to which may fall within the provisions of section eleven of this act. [26 Stat. L. 861.]

This section was amended by the Act of Feb. 21, 1893, ch. 149, 27 Stat. L. 470, by striking out after the words "in the con- tinuous adverse actual bona fide possession" the words "residing thereon as his home," appearing in the section as originally enacted.

SEC. 17. [*Entry of lands by adverse possessors in surveyed townships — surveys.*] That in the case of townships heretofore surveyed in the Territories of New Mexico, Arizona, and Utah, and the States of Colorado, Nevada, and Wyoming, all persons who, or whose ancestors, grantors, or their lawful successors in title or possession, became citizens of the United States by reason of the treaty of Guadalupe Hidalgo, or the terms of the Gadsden purchase, and who have been in the actual continuous adverse possession of tracts, not to exceed one hundred and sixty acres each, for twenty years next preceding such survey, shall be entitled, upon making proof of such facts to the satisfaction of the register and receiver of the proper land district, and of the Commissioner of the General Land Office, upon such investigation as is provided for in section sixteen of this act, to enter without payment of purchase money, fees, or commissions such subdivisions, not exceeding one hundred and sixty acres, as shall include their said possessions.

After a claim of the character described shall have been filed as directed in section eighteen of this act, and it shall appear that a tract claimed as aforesaid is of such shape that the claimant can not readily secure his interests by an entry by legal subdivisions of the public surveys, the Commissioner of the General Land Office may cause such claim to be surveyed at the expense of the United

States, but the deputy surveyor performing the work shall not be paid for his services more than five dollars per day in addition to his necessary expenses.

Before commencing such a survey the deputy surveyor shall post, in at least three prominent places in the township in which such claim is situated, a notice in both the English and Spanish languages, calling on all persons entitled to lands in said township under this section, to submit to him within a reasonable time proofs of their rights in the lands, by affidavit or otherwise. He shall then proceed to establish the lines of such possessions in the township as seem to him to be valid, properly connecting the lines thereof with the lines of public surveys, and he shall return the aforesaid proofs to the surveyor-general with the field notes of such claims and possessions. The surveyor-general shall then, upon his approval of said proofs and field notes of surveys, cause the said claim or claims to be platted, and numbered as a lot or lots of the section or sections in which such claim or claims are situated, and shall transmit a duplicate of the amended plat to the General Land Office and a triplicate thereof to the proper district land office, after which the land claimed as aforesaid may be entered as a lot or lots by the number or numbers designated upon the amended township plat:

Provided, however, That no person shall be entitled to enter more than one hundred and sixty acres in one or more tracts in his own right under the provisions of this section. [27 Stat. L. 471.]

This section was amended to read as above by the Act of Feb. 21, 1893, ch. 149.

The section originally read as follows:

"SEC. 17. That in the case of townships heretofore surveyed in the Territories of New Mexico, Arizona, and Utah, and the States of Colorado, Nevada, and Wyoming, all persons who, or whose ancestors, grantors, or their lawful successors in title or possession, became citizens of the United States by reason of the treaty of Guadalupe-Hidalgo, and who have been in the actual continuous adverse possession and residence thereon of tracts of not to exceed one hundred and sixty acres each, for twenty years next preceding such

survey, shall be entitled, upon making proof of such facts to the satisfaction of the register and receiver of the proper land district, and of the Commissioner of the General Land Office upon such investigation as is provided for in section sixteen of this act, to enter without payment of purchase money, fees, or commissions, such legal subdivisions, not exceeding one hundred and sixty acres, as shall include their said possessions: *Provided, however,* That no person shall be entitled to enter more than one such tract, in his own right, under the provisions of this section." [26 Stat. L. 862.]

SEC. 18. [Time for filing claims.] That all claims arising under either of the next two preceding sections of this Act shall be filed with the surveyor-general of the proper State or Territory before the fourth day of March, nineteen hundred and one, and no claim not so filed shall be valid. And the class of cases provided for in said two next preceding sections shall not be considered or adjudicated by the court created by this act, and no tract of such land shall be subject to entry under the land laws of the United States. [26 Stat. L. 862, 27 Stat. L. 471, 30 Stat. L. 495.]

This section was amended to read as above by the Act of June 27, 1898, ch. 504, 30 Stat. L. 495. As originally enacted it required claims to be filed "within two years next after the passage of this Act." It was amended by the Act of Feb. 21, 1893, ch. 149, 27 Stat. L. 471, by requiring claims to be

filed "within two years next after the first day of December, eighteen hundred and ninety-two." It was amended by the Act of June 27, 1898, ch. 504, by requiring claims to be filed "before the fourth day of March, nineteen hundred and one," as given in the text.

SEC. 19. [Functions of court, when to cease.] That the powers and functions of the court established by this Act shall cease and determine on the thirtieth day of June, nineteen hundred and three, and all papers, files, and records in the possession of the said court belonging to any other public office of the United States shall be returned to such office, and all other papers,

files, and records in the possession of or appertaining to said court shall be returned to and filed in the Department of the Interior. [32 Stat. L. 170.]

This section was amended to read as above by the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 594, sec. 1.

By the section as originally enacted the functions of the court were to cease Dec. 31, 1895. The time was extended by the Act of March 2, 1895, ch. 177, 28 Stat. L. 805, to

Dec. 31, 1897. The time was again extended by the Act of Feb. 19, 1897, ch. 265, 29 Stat. L. 577, to March 4, 1899. It was again extended by the Act of Feb. 24, 1899, ch. 187, 30 Stat. L. 888, to June 30, 1900. It was again extended by the Act of April 17, 1900, ch. 192, 31 Stat. L. 132, to June 30, 1902. It was again extended as shown in the text.

[SEC. 1.] [*Publication of notice of survey.*] * * * For survey of private land claims in the States of Colorado, Nevada, Wyoming, and Utah, and in the Territories of Arizona and New Mexico, confirmed under the provisions of the Act of Congress entitled "An Act to establish a Court of Private Land Claims, and to provide for the settlement of private land claims in certain States and Territories," approved March third, eighteen hundred and ninety-one, and for the resurvey of such private land claims heretofore confirmed as may be deemed necessary, ten thousand dollars, said sum to be also available for office work on such surveys and for the examination of the surveys in the field: *Provided*, That hereafter the notices of survey required by section ten of said Act shall be published in one newspaper only, except where specifically directed by the Commissioner of the General Land Office. * * * [31 Stat. L. 616.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

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Fees of Clerks and Marshals in Prize Cases, see *JUDICIAL OFFICERS*, vol. 4, p. 125.
Jurisdiction of District Court and Appeals in Prize Cases, see *JUDICIARY*, vol. 4, p. 195.
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Registration of Captured and Condemned Vessels, see *SHIPPING AND NAVIGATION*.
Piratical Vessels, see *PIRACY*, vol. 5, p. 752.

Sec. 4613. [*Application of provisions of title.*] The provisions of this Title shall apply to all captures made as prize by authority of the United States, or adopted and ratified by the President of the United States. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 315.

Sections 4613-4652 constitute the whole of title 54 of the Revised Statutes, entitled as above.

Capture by army and navy combined.—Where a town is captured by the combined naval and army forces, and after the surrender an abandoned merchant vessel is found on fire in the harbor by a commissioned cruiser which puts out the fire, a claim that such merchant vessel is a prize in which the cruiser may claim an interest for prize money may not be allowed, as the capture was made by the combined forces of the army and navy; but salvage for the services in saving the ves-

sel may be allowed. *The Siren*, 1 Lowell (U. S.) 280, 22 Fed. Cas. No. 12,911, *affirmed* (1871) 13 Wall. (U. S.) 389.

The naval stores taken at a naval station by a naval force as the result of a naval engagement are prize, within the meaning of the statute, and the fact that they were taken from a navy yard instead of from a vessel does not render the statute inapplicable. *Manila Prize Cases*, (1903) 188 U. S. 254.

Barges as prizes.—Barges propelled by sweeps and by poling and floating derricks or wrecking boats captured by the navy are not prizes within the meaning of this section. *Manila Prize Cases*, (1903) 188 U. S. 254.

Sec. 4614. [*What are vessels of the navy.*] The term "vessels of the Navy," as used in this Title, shall include all armed vessels officered and manned by the United States, and under the control of the Department of the Navy. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 315.

Capture by transport.—Where a vessel and cargo were captured at sea by a steamer employed as a transport in the service of the United States, but not a commissioned vessel of war, it was held that the filing by the

United States of a libel against the vessel and cargo as prize was an affirmation by the United States of the capture and that such ratification was equivalent to an original seizure by authority of the government. *The Emma*, (1863) Blatchf. Prize Cas. 561, 8 Fed. Cas. No. 4,461.

Sec. 4615. [*Duties of commanding officer upon making capture.*] The commanding officer of any vessel making a capture shall secure the documents of the ship and cargo, including the logbook, with all other documents, letters, and other papers found on board, and make an inventory of the same, and seal them up, and send them, with the inventory, to the court in which pro-

ceedings are to be had, with a written statement that they are all the papers found, and are in the condition in which they were found; or explaining the absence of any documents or papers, or any change in their condition. He shall also send to such court, as witnesses, the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have knowledge respecting, the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize-master and prize-crew, into port for adjudication, explaining the absence of any usual witnesses; and in the absence of instructions from superior authority as to the port to which it shall be sent, he shall select such port as he shall deem most convenient, in view of the interests of probable claimants, as well as of the captors. If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to such court, and subject to its order in the cause. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 306.

Lists of persons claiming prize money, see ARTICLES FOR THE GOVERNMENT OF THE NAVY, vol. 1, p. 466.

General construction. — "The statute contemplates that the captured property, or the proceeds, if sold, shall be brought to the proper port, unless it be destroyed or appropriated to the use of the government before such delivery, and in case of appropriation before or after delivery the value of the property shall be deposited by the government for disposition. Adjudication as to the legality of the capture and award of prize money in a proper case are required when the vessel is brought in, sold or appropriated, but adjudication only as to lawful prize as distinguished from award of bounty money when the property has been destroyed." The Santo Domingo, (1903) 119 Fed. Rep. 386.

Necessity of delivery. — "Captors share in such property as is delivered for adjudication. Such delivery must be actual unless on account of the condition of the property it cannot be made, when sale is authorized by the commanding officer present, or unless it has been appropriated 'for the use of the government.'" The Santo Domingo, (1903) 119 Fed. Rep. 386.

"The duty of saving the property from recapture is a condition precedent of recovering prize money, which is measured by what is delivered secure from the hostile force, and not by what may be destroyed in view of the peril of recapture or other exigency, and this duty to defend and to save cannot be used as a plea to escape defense under the guise of appropriation at the public expense." The Santo Domingo, (1903) 119 Fed. Rep. 386.

Effect of rescue or recapture. — "A captor is not entitled to prize money unless he captures and prevent recapture. The captor must

take and deliver. He must in offensive action seize, and if need be in defensive action retain, and his success in both regards, if it be good prize, perfects his right to an adjudication for prize money. Rescue or recapture defeats such right." The Santo Domingo, (1903) 119 Fed. Rep. 386.

Destruction of prize as appropriation for use of government. — "The destruction of a lawful prize at the instance of the commander of the captors, by reason of the imminent danger of recapture, is not such an appropriation of the property for the use of the government as constrains the United States to deposit the value thereof for distribution, and entitles the captors to share therein." The Santo Domingo, (1903) 119 Fed. Rep. 386.

"Property annihilated, although its non-existence be beneficial in depriving the enemy of its use, is alike incapable of use by the captors' government, and the act of destroying for the sake of destruction, as distinguished from consumption or destruction in the course of use, is not such user as the statute contemplates." The Santo Domingo, (1903) 119 Fed. Rep. 386.

Effect of destruction of prize. — "When captors take a lawful prize they have alternative duties. — to save it, if practicable; to destroy it, if it be impracticable to save. The first duty insures prize money, other elements of the right existing; the second duty involves the sacrifice of prize money, and the pecuniary reward is in the form of bounty. But captors cannot scuttle the ship captured and have her in the form of prize money. Their money reward is measured by what they deliver secure from the enemy. If persons be sent to capture a vessel and thereupon to destroy her, the destruction precludes prize money, * * * and if the destruction *ex necessitate rei* must and does follow capture,

the captor's status is the same. Indeed, if it is impracticable to bring the property into port, or to make some safe disposition of it,

the captor's duty is to destroy, although it result in a renunciation of prize money." The *Santo Domingo*, (1903) 119 Fed. Rep. 386.

Sec. 4616. [*Statement of claim to share in prize.*] If any vessel of the United States shall claim to share in a prize, either as having made the capture, or as having been within signal distance of the vessel or vessels making the capture, the commanding officer of such vessel shall make out a written statement of his claim, with the grounds on which it is founded, the principal facts tending to show what vessels made the capture, and what vessels were within signal distance of those making the capture, with reasonable particularity as to times, distances, localities, and signals made, seen, or answered; and such statement of claim shall be signed by him and sent to the court in which proceedings shall be had, and shall be filed in the cause. [*R. S.*]

Act of June 30, 1864, ch. 174, 13 Stat. L. 307.

vessels abolished. — See Act of March 3, 1899, ch. 413, sec. 13, *infra*, p. 80.

Prizes or bounty for destruction of enemy's

Sec. 4617. [*Duties of prize-master.*] The prize-master shall make his way diligently to the selected port, and there immediately deliver to a prize-commissioner the documents and papers, and the inventory thereof, and make affidavit that they are the same, and are in the same condition as delivered to him, or explaining any absence or change of condition therein, and that the prize-property is in the same condition as delivered to him, or explaining any loss or damage thereto; and he shall further report to the district attorney and give to him all the information in his possession respecting the prize and her capture; and he shall deliver over the persons sent as witnesses to the custody of the marshal, and shall retain the prize in his custody until it shall be taken therefrom by process from the prize-court. [*R. S.*]

Act of June 30, 1864, ch. 174, 13 Stat. L. 307.

See R. S. sec. 5441, *infra*, p. 87.

Sec. 4618. [*Libel and proceedings by district attorney.*] Upon receiving the report of the prize-master directed by the preceding section, the attorney of the United States for the district shall immediately file a libel against such prize property, and shall forthwith obtain a warrant from the court, directing the marshal to take it into his custody, and shall proceed diligently to obtain a condemnation and distribution thereof; and to that end shall see that the proper preparatory evidence is taken by the prize-commissioners, and that the prize-commissioners also take the depositions *de bene esse* of the prize-crew, and of other transient persons cognizant of any facts bearing on condemnation or distribution. [*R. S.*]

Act of June 30, 1864, ch. 174, 13 Stat. L. 307.

Decree for damages against United States.

— A decree may properly be entered against the United States for damages where a vessel has been captured as a prize of war and thereafter restitution decreed to the claimants of the vessel, where the libels were filed by the United States on its own behalf. The *Paquete Habana*, (1903) 189 U. S. 453.

Decree for restitution with damages and

costs against captors. — The statutes seem to contemplate that the libels filed by the United States were filed on its own behalf, and where a capture is made pursuant to instructions from the President, and a decree is rendered by the prize court that restitution, with damages and costs, should be made to the claimants, a decree cannot be entered against the captors of a vessel on such libel filed by the United States. The *Paquete Habana*, (1903) 189 U. S. 453.

Sec. 4619. [*Duties of district attorneys.*] The district attorneys of the several judicial districts shall represent the interests of the United States in all prize-causes, and shall not act as separate counsel for the captors on any

private retainer or compensation from them, unless in a question between the claimants and the captors, on a demand for damages. They shall examine all fees, costs, and expenses, sought to be charged on any prize-fund, and protect the interest of the captors and of the United States. The district attorneys of all districts in which any prize-causes are or may be pending shall, as often as once in three months, send to the Secretary of the Navy a statement of the condition of all prize-causes pending in their districts, in such form and embracing such particulars as the Secretary of the Navy shall require. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 307.

Nature of prize court and duties of district attorney.—The prize court is and always has been a component part of the admiralty court, and in prosecuting in prize cases the district attorney acts as the law officer of the government and not in any other capacity. The

Anna. (1863) Blatchf. Prize Cas. 337, 1 Fed. Cas. No. 402.

As to the proper procedure and the duties of the district attorney in disposing of property found on the persons of individuals in the act of violating the blockade, see *Property Captured by the Potomac Flotilla*, (1863) 10 Op. Atty-Gen. 467.

Sec. 4620. [*Special counsel for captors.*] [*Repealed.*]

This section was as follows:

"Sec. 4620. In any case of capture made by vessels of the Navy, the Secretary of the Navy may employ special counsel for captors, when, in his judgment, the services of such special counsel are needed in the particular case, for the due protection of the interests of the captors and of the Navy-pension fund;

and, under the direction of the Secretary of the Navy, such counsel may institute and prosecute such proceedings in the case as may be necessary and proper for the protection of such interests." Act of June 30, 1864, ch. 174, 13 Stat. L. 307.

It was "struck out" by Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 252.

Sec. 735. [*Captures of insurrectionary property, where cognizable.*] Proceedings for the condemnation of any property captured whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the Government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted. [R. S.]

Act of Aug. 6, 1861, ch. 60, 12 Stat. L. 319.

The words "as prize," which appeared in the section as originally enacted, following the words "any property captured," were stricken out by the Act of Feb. 18, 1875, ch. 80, 18 Stat. L. 318.

Somewhat similar provisions are contained in R. S. sec. 564, in JUDICIARY, vol. 4, p. 236.

General rule of application.—"It is sufficiently obvious that the general object of the enactment was to promote the suppression of rebellion by subjecting property employed in aid of it with the owner's consent to confiscation. It extended to all descriptions of property, real or personal, on land or on water. All alike were made subjects of prize and capture, and, under the direction of the President, of seizure, confiscation, and condemnation." *Union Ins. Co. v. U. S.*, (1867) 6 Wall. (U. S.) 759.

What property included.—"This Act was intended for private, not public, property—for such property of persons as required, under the laws of war, a judicial sentence of condemnation to divest the title of its owner—not such property of a hostile government as had already been captured by an army and

subjected to the complete and undisputed dominion and ownership of the conquering power. It applies to all property, personal as well as real." *Titus v. U. S.*, (1874) 20 Wall. (U. S.) 475.

Seizure necessary.—"If, for any reason, whether from the act of the defendant himself or from any cause whatever, the government cannot seize the property, it cannot enforce the forfeiture." *U. S. v. Stevenson*, (1869) 3 Ben. (U. S.) 119, 27 Fed. Cas. No. 16,396.

No property capable of seizure.—"The Prize Acts do not contemplate 'any proceeding as in admiralty where there existed no specific property or proceeds capable of seizure and capture.'" *Morris v. U. S.*, (1868) 7 Wall. (U. S.) 578.

Power to award restitution.—"Every District Court of the United States possesses all the powers of a court of admiralty, both instance and prize, and may award restitution of property claimed as prize of war by a foreign captor. *Glass v. The Sloop Betsey*, (1794) 3 Dall. (U. S.) 6.

Forfeiture of stock of foreign corporation.—"A District Court of the United States in New York cannot acquire jurisdiction in rem

to declare a forfeiture under these acts of shares in the capital stock of an Illinois corporation." U. S. v. 1,756 Shares Capital Stock, (1865) 5 Blatchf. (U. S.) 231, 27 Fed. Cas. No. 15,961.

What court may decree final distribution.

—No court of the United States is empowered to decree final distribution in prize, except the court which first acquires jurisdiction over the *res* or its representative proceeds. *Winchester's Case*, (1878) 14 Ct. Cl. 53.

Sec. 4621. [*Appointment of prize commissioners.*] Any district court may appoint prize-commissioners, not exceeding three in number; of whom one shall be a retired naval officer, approved by the Secretary of the Navy, who shall receive no other compensation than his pay in the Navy, and who shall protect the interests of the captors and of the Department of the Navy in the prize-property; and at least one of the others shall be a member of the bar of the court, of not less than three years' standing, and acquainted with the taking of depositions. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 307.

Sec. 4622. [*Duties of prize commissioners.*] The prize-commissioners, or one of them, shall receive from the prize-master the documents and papers, and inventory thereof, and shall take the affidavit of the prize-master required by section forty-six hundred and seventeen, and shall forthwith take the testimony of the witnesses sent in, separate from each other, on interrogatories prescribed by the court, in the manner usual in prize-courts; and the witnesses shall not be permitted to see the interrogatories, documents, or papers, or to consult with counsel, or with any persons interested, without special authority from the court; and witnesses who have the rights of neutrals shall be discharged as soon as practicable. The prize-commissioners shall also take depositions *de bene esse* of the prize-crew and others, at the request of the district attorney, on interrogatories prescribed by the court. They shall also, as soon as any prize-property comes within the district for adjudication, examine the same, and make an inventory thereof, founded on an actual examination, and report to the court whether any part of it is in a condition requiring immediate sale for the interests of all parties, and notify the district attorney thereof; and if it be necessary to the examination or making of the inventory that the cargo be unladen, they shall apply to the court for an order to the marshal to unlade the same, and shall, from time to time, report to the court anything relating to the condition of the property, or its custody or disposal, which may require any action by the court, but the custody of the property shall be in the marshal only. They shall also seasonably return into court, sealed and secured from inspection, the documents and papers which shall come to their hands, duly scheduled and numbered, and the other preparatory evidence, and the evidence taken *de bene esse*, and their own inventory of the prize-property; and if the captured vessel, or any of its cargo or stores, are such as in their judgment may be useful to the United States in war, they shall report the same to the Secretary of the Navy. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 308. See also R. S. sec. 5441, *infra*, p. 87.

"The word 'ship' embraces her boats, tackle, apparel, and appurtenances, because part of the ship as a going concern, and for the same reason 'ship or vessel of war' includes her armament, search lights, stores, everything, in short, attached to or on board the ship in aid of her operations." *Manila Prize Cases*, (1903) 188 U. S. 268.

"The words 'ship or vessel of war belonging to the enemy' are sufficiently comprehen-

sive to embrace not only everything essential to the ship's navigation, but to the purposes of her existence." *Manila Prize Cases*, (1903) 188 U. S. 270.

A ship or vessel of war belonging to an enemy includes armament, outfit, and appurtenances, comprising provisions, money to pay the crew or for necessary expenditures, everything necessary to be used for the purposes of the vessel and as a vessel of war. *The Infanta Maria Teresa*, (1903) 188 U. S. 233.

Sec. 4623. [*Duties of marshal.*] The marshal shall safely keep all prize-property under warrant from the court, and shall report to the court any cargo or other property that he thinks requires to be unladen and stored, or to be sold. He shall insure prize-property, if in his judgment it is for the interest of all concerned. He shall keep in his custody all persons found on board a prize and sent in as witnesses, until they are released by the prize-commissioners or the court. If a sale of property is ordered, he shall sell the same in the manner required by the court, and collect the purchase-money, and forthwith deposit the gross proceeds of the sales with the assistant treasurer of the United States nearest the place of sale, subject to the order of the court in the particular cause; and each marshal shall forward to the Secretary of the Navy, whenever and as often as the Secretary of the Navy may require it, a full statement of the condition of each prize and of the disposal made thereof. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 308.

Sec. 4624. [*Appraisal, etc., of property taken for Government.*] Whenever any captured vessel, arms, munitions, or other material are taken for the use of the United States before it comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried, by persons as competent and impartial as can be obtained, and the survey, appraisement, and inventory shall be sent to the court in which proceedings are to be had; and if taken afterward, sufficient notice shall first be given to enable the court to have the property appraised for the protection of the rights of the claimants and captors. In all cases of prize-property taken for or appropriated to the use of the Government, the Department for whose use it is taken or appropriated shall deposit the value thereof with the assistant treasurer of the United States nearest to the place of the session of the court, subject to the order of the court in the cause. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 314.

Declaration of prior practice.—This Act is “declaratory of a practice that had previously existed by which prizes were turned over to the United States at the appraised value, sometimes before and sometimes after adjudication, such transfer being treated as a sale.” (1879) 16 Op. Atty.-Gen. 339.

“The practice is settled that where the captors desire to take to their own use the property captured as prize, its value is to be ascertained by sworn appraisal and deposited in court, or in the treasury, subject to the order of the court.” The *Ella Warley*, (1862) Blatchf. Prize Cas. 204, 8 Fed. Cas. No. 4,370.

Transfer to government before condemnation.—The District Court has sufficient authority to appraise property captured as prize, and to transfer it to the use of the government before condemnation, at its appraised value. The *Ella Warley*, (1862) Blatchf. Prize Cas. 207, 8 Fed. Cas. No. 4,371.

Vessel sunk, but subsequently raised by government.—Where a hostile vessel of war

has been so far destroyed that she cannot be brought in by the naval force that reduced her to that condition, but she is raised, reconstructed, and appropriated to the use of the government, the statute may be so construed as to permit a claim for prize money. But a vessel raised and subsequently lost by reason of her injuries prior to her appropriation by the government is not such a case as will permit the allowance of prize money. The *Infanta Maria Teresa*, (1903) 188 U. S. 283.

Vessels temporarily disabled.—Where vessels are run ashore and sunk by their own commanders, with the result that they are only temporarily disabled and are thereafter raised by the government and saved for governmental use, they are not vessels “sunk or otherwise destroyed,” within the meaning of section 4635, even though they cannot be repaired by any means possessed by the naval forces in the places where they lie, but they are entitled to be treated as prize. *Manila Prize Cases*, (1903) 188 U. S. 254.

Sec. 4625. [*Proceedings for adjudication where property is not sent in.*] If by reason of the condition of the captured property, or if because the whole has been appropriated to the use of the United States, no part of it has been or can be sent in for adjudication, or if the property has been entirely lost or

destroyed, proceedings for adjudication may be commenced in any district the Secretary of the Navy may designate; and in any such case the proceeds of anything sold, or the value of anything taken or appropriated for the use of the United States, shall be deposited with the assistant treasurer in or nearest to that district, subject to the order of the court in the cause. If, when no property can be sent in for adjudication, the Secretary of the Navy shall not, within three months after any capture, designate a district for the institution of proceedings, the captors may institute proceedings for adjudication in any district. And if in any case of capture no proceedings for adjudication are commenced within a reasonable time, any parties claiming the captured property may, in any district court as a court of prize, move for a monition to show cause why such proceedings shall not be commenced, or institute an original suit in such court for restitution, and the monition issued in either case shall be served on the attorney of the United States for the district, and on the Secretary of the Navy, as well as on such other persons as the court shall order to be notified. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 314.

To what property applicable.—This section refers only to property actually captured

and not to property which has been destroyed without ever having been actually seized or in the possession of the United States forces. (1898) 22 Op. Atty.-Gen. 171.

Sec. 4626. [*Delivery of property on stipulation.*] No prize-property shall be delivered to the claimants on stipulation, deposit, or other security, except where there has been a decree of restitution and the captors have appealed therefrom, or where the court, after a full hearing on the preparatory proofs, has refused to condemn the property on those proofs, and has given the captors leave to take further proofs, or where the claimant of any property shall satisfy the court that the same has a peculiar and intrinsic value to him, independent of its market-value. In any of these cases, the court may deliver the property on stipulation or deposit of its value, if satisfied that the rights and interests of the United States and captors, or of other claimants, will not be prejudiced thereby; but a satisfactory appraisement shall be first made, and an opportunity given to the district attorney and naval prize-commissioner to be heard as to the appointment of appraisers. Any money deposited in lieu of stipulation, and all money collected on a stipulation, not being costs, shall be deposited with the assistant treasurer, in the same manner as proceeds of a sale. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 313.

Sec. 4627. [*When property may be sold.*] Whenever any prize-property is condemned, or at any stage of the proceedings is found by the court to be perishing, perishable, or liable to deteriorate or depreciate, or whenever the costs of keeping the same are disproportionate to its value, the court shall order a sale of such property; and whenever, after the return-day on the libel, all the parties in interest who have appeared in the cause agree thereto, the court may make such order; and no appeal shall operate to prevent the making or execution of such order. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 308.

Exposure of vessel to great injury sufficient.—The fact that a vessel may be protected if not wholly saved by a more vigilant care bestowed upon her by her keepers, and particularly by pumping her watchfully, and by

other precautionary acts requiring considerable expense, is not sufficient to prevent the sale of such vessel by the marshal, on the ground that the condition of the vessel is such as to expose her to great injury. *The Ella Warley*, (1862) Blatchf. Prize Cas. 213, 8 Fed. Cas. No. 4,372.

Sec. 4628. [*Mode of making sale.*] Upon a sale of any prize-property by order of the court, the Secretary of the Navy shall employ an auctioneer of known skill in the branch of business to which any sale pertains, to make the sale, but the sale shall be conducted under the supervision of the marshal, and the collecting and depositing of the gross proceeds shall be by the auctioneer or his agent. Before any sale the marshal shall cause full catalogues and schedules to be prepared and circulated, and a copy of each shall be returned by the marshal to the court in each cause. The marshal shall cause all sales to be advertised fully and conspicuously in newspapers ordered by the court, and by posters, and he shall, at least five days before the sale, serve notice thereof upon the naval prize-commissioner, and the goods shall be open to inspection at least three days before the sale. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 308.

Sec. 4629. [*Transfer of property to another district for sale.*] Whenever it appears to the court, in the case of any prize-property ordered to be sold, that it will be for the interest of all parties to have it sold in another district, the court may direct the marshal to transfer the same to the district selected by the court for the sale, and to insure the same, with proper orders as to the time and manner of selling the same. It shall be the duty of the marshal so to transfer the property, and keep and sell the same in like manner as if the property were in his own district; and he shall deposit the gross proceeds of the sale with the assistant treasurer nearest to the place of sale, subject to the order of the court in which the adjudication thereon is pending. The necessary expenses attending the insuring, transferring, receiving, keeping, and selling the property shall be a charge upon it and upon the proceeds thereof; and whenever any such expense is paid in advance by the marshal, and he is not repaid from the proceeds, any amount not so repaid shall be allowed to him, as in case of expenses incurred in suits in which the United States is a party. The Secretary of the Navy may, in like manner, either by a general regulation or by special direction in any cause, require a marshal to transfer any prize-property from the district in which the judicial proceedings are pending, to any other district for sale; and the same proceedings shall be had as if such transfer had been made by order of the court. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 315. See also R. S. sec. 5441, *infra*, p. 87.

Libel for salvage of vessel transferred to another district for sale.—A vessel condemned as a prize and transferred by the marshal to another district for sale, is still under the jurisdiction of the court of condemnation, and she may not be libeled in the district to which she was transferred for

salvage services rendered in such district. The remedy is either by intervention in the proceedings in the court of condemnation, or by application direct to the government at Washington, for reasonable compensation for such services as may have been voluntarily rendered in the emergency. *In re White Star Towing Co.*, (1898) 91 Fed. Rep. 285.

Sec. 4630. [*Share of captors.*] [*Superseded.*]

This section was as follows:

"Sec. 4630. The net proceeds of all property condemned as prize, shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors, except that in case of privateers and letters of marque, the whole shall be decreed to the captors, unless it shall be otherwise provided in the commis-

sions issued to such vessels." Act of June 30, 1864, ch. 174, 13 Stat. L. 309.

Bounty or prize money for destruction of enemy's vessels abolished.—This section, as well as all provisions of sections 4631-4635, that relate to the distribution of the proceeds of property condemned as prize, or to the payment of bounty for destruction of enemy's vessels, was superseded by Acts of March 3, 1899, ch. 413, sec. 13. See *infra*, p. 80.

Ransom money, salvage, and salvage on

recapture are to be distributed under the provisions of the sections named by R. S. secs. 4642, 4652, *infra*, pp. 83, 85.

Pension fund from prize moneys, see R. S. secs. 4752, 4759, *infra*, p. 86.

Right to prize money by statute only.—“The right of vessels of the navy of the United States to prize money comes only in virtue of grant or permission from the United States, and if no Act of Congress sanctions a claim to it, it does not exist.” *The Siren*, (1871) 13 Wall. (U. S.) 389.

Why prize money is given.—Prize money is given as an inducement to enter the service of the United States and perform the duties connected therewith with bravery and fidelity. *Cole v. U. S.*, (1899) 34 Ct. Cl. 447.

Title to captured property.—“When property is captured on land by a belligerent, the title passes and is vested so soon as the capture is complete, and the property then belongs absolutely to the sovereign. In regard to a prize taken at sea, the right of property is not changed by the seizure alone. The prize remains in the hands of the captor lawfully sequestered, under a species of trusteeship, awaiting a trial at law in the courts of the nation seizing it. While undergoing the processes of law necessary to ascertain its character, it is exempt from all power of the captors other than that of safe keeping for the purposes of trial and of determining its culpability. Until the decree of the prize court has transferred the title of the prize to the capturing power the lawful proprietorship continues with the original possessor, subject to no other use or appropriation by its occupant than that of safe keeping under arrest, pending judicial proceedings seeking its forfeiture.” *The Peterhoff*, (1865) Blatchf. Prize Cas. 620, 19 Fed. Cas. No. 11,025.

“Vessels making the capture.”—“If none of the other vessels were within signal distance none of them were ‘vessels making the capture,’ within the meaning of section 4630. The phrase must be taken to be used in that section in the same sense in which it is used in section 4632, where it is opposed to vessels within signal distance and is defined as meaning ‘vessels present at and rendering actual assistance in the capture.’” *Mangrove Prize Money*, (1903) 188 U. S. 720.

Where two ironclads, blocking the same port, were attacked by an ironclad of the enemy, which was captured by them, it was held, in *The Iron-clad Ram Atlanta*, (1864) 2 Sprague (U. S.) 251, 2 Fed. Cas. No. 619, and *affirmed* in (1865) 3 Wall. (U. S.) 425, that both were entitled to share alike in the proceeds of the prize, although all the shots fired causing the surrender came from one of the ironclads, the other receiving the fire of the enemy and reserving her own fire for the purpose of engaging at close range, and prevented therefrom by the surrender.

Vessels within signal distance.—“It cannot be contended that vessels too far away to share in the prize as being within signal distance can share under the more immediate title of vessels making the capture on the ground of some more remote contribution to

the result. Vessels within signal distance and able to render effective aid are let in, it is true, presumably because they are taken to contribute to the result, but a remote contribution is excluded.” *Mangrove Prize Money*, (1903) 188 U. S. 720.

Prize to United States only.—In *The Siren*, (1868) 1 Lowell (U. S.) 280, 22 Fed. Cas. No. 12,911, it was held that “The Prize Act of 1864 (13 Stat. 306), does not exhaust the subject of prize or no prize. There may still be captures which go to the United States only and not to the captors, and there may be prize without captors.”

Vessels captured by army and navy combined.—“Prize money or bounty in lieu of it is not allowed by laws of Congress where vessels of the enemy are captured or destroyed by the navy with the co-operation of the army. To win either, the navy must achieve its success without the direct aid of the army, by maritime force only. No pecuniary reward is conferred for anything taken or destroyed by the navy when it acts in conjunction with the army in the capture of a fortified position of the enemy, though the meritorious services and gallant conduct of its officers and men may justly entitle them to honorable mention in the history of the country.” *Porter v. U. S.*, (1882) 106 U. S. 607.

There is no Act giving prize to the navy in cases of joint capture by the army and navy, and in cases of such capture the capture inures exclusively to the benefit of the United States. *The Siren*, (1871) 13 Wall. (U. S.) 389.

What vessels included in determination of relative forces.—Where vessels are not within signal distance of another vessel making a capture, they may not be taken into account in the determination of the question of the superiority of force of the captured vessel, although their presence may have been a motive for the surrender. *Mangrove Prize Money*, (1903) 188 U. S. 720.

A vessel within signal distance of a vessel making a capture is to be included in the determination of the relative force of the captors and the prize. *The Iron-clad Ram Atlanta*, (1864) 2 Sprague (U. S.) 251, 2 Fed. Cas. No. 619, *affirmed* (1865) 3 Wall. (U. S.) 425.

Land batteries, mines, etc., not included.—In determining whether the enemy's vessels were of inferior or superior force to the American vessels engaged, the land batteries, mines, and torpedoes not controlled by those in charge of the enemy's vessels, but which supported those vessels, are to be excluded altogether from consideration, and the size and armaments of the enemy's vessels, together with the number of men upon them, are alone to be regarded. *Dewey v. U. S.*, (1900) 178 U. S. 510.

Effect of capture on pay.—The capture of the enemy's property does not increase naval pay proper, but enlarges the right to compensation. *Cole v. U. S.*, (1899) 34 Ct. Cl. 447.

The statutory lien of a seaman for wages is not applicable as against the higher and

older titles of the captors of the vessel as a prize of war, or as against the title of the United States to such vessel as prize. U. S. v. The Saily Magee, (1866) 4 Int. Rev. Rec. 134, 27 Fed. Cas. No. 16,216.

Remission of forfeiture by President.—The President has authority to grant remission of forfeiture in cases of prizes of war

after the vessels have been condemned, but before the prize money has been deposited in the treasury of the United States. His jurisdiction in these matters rests upon his pardoning power as defined in sec. 2, art. 11, of the Constitution." (1901) 23 Op. Atty-Gen. 360.

Sec. 4631. [Distribution of proceeds to captors.] All prize-money adjudged to the captors shall be distributed in the following proportions:

First. To the commanding officer of a fleet or squadron, one-twentieth part of all prize money awarded to any vessel or vessels under his immediate command.

Second. To the commanding officer of a division of a fleet or squadron, on duty under the orders of the commander-in-chief of such fleet or squadron, a sum equal to one-fiftieth part of any prize-money awarded to a vessel of such division for a capture made while under his command, such fiftieth part to be deducted from the moiety due to the United States, if there be such moiety, otherwise from the amount awarded to the captors; but such fiftieth part shall not be in addition to any share which may be due to the commander of the division, and which he may elect to receive, as commander of a single ship making or assisting in the capture.

Third. To the fleet-captain, one-hundredth part of all prize-money awarded to any vessel or vessels of the fleet or squadron in which he is serving, except in a case where the capture is made by the vessel on board of which he is serving at the time of such capture; and in such case he shall share, in proportion to his pay, with the other officers and men on board such vessel.

Fourth. To the commander of a single vessel, one-tenth part of all the prize-money awarded to the vessel under his command, if such vessel at the time of the capture was under the command of the commanding officer of a fleet or squadron, or a division, and three-twentieths if his vessel was acting independently of such superior officer.

Fifth. After the foregoing deductions, the residue shall be distributed and proportioned among all others doing duty on board, including the fleet-captain, and borne upon the books of the ship, in proportion to their respective rates of pay in the service. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 309.

See note as to repeal under R. S. sec. 4630, *supra*.

Amendment.—See amendment in following Act.

Theory of general regulations.—"Those rules would seem to have been framed upon the theory that in making general regulations for the distribution of prize money, it is more just and equitable and more suitable to the rank of commanding officers to grant them a certain fractional part than to determine their shares by their rates of pay like subordinate officers and men, and upon the supposition that the fractional part awarded to the commander of a single ship will usually be more than equivalent to a share proportioned to his rate of pay." U. S. v. Steever, (1885) 113 U. S. 747, *affirming* (1884) 19 Ct. Cl. 51.

Nature of grant.—"The law regulating the distribution of prize money among naval captors is a conditional grant by Congress,

and as soon as the conditions are fulfilled the grant becomes absolute." (1864) 11 Op. Atty-Gen. 102.

"Ship" defined.—In U. S. v. Steever, (1885) 113 U. S. 747, *affirming* (1884) 19 Ct. Cl. 51, it was held that the word "ship" in prior acts "in the few instances in which it occurs, has no restricted sense implying three square-rigged masts or any masts at all, but is synonymous with the general words 'vessel of the navy,' or simply 'vessel,' as used throughout the Act, and comes within the definition of section 32, by which, in the term 'vessels of the navy,' are to be included for the purposes of this Act all armed vessels officered and manned by the United States and under the control of the department of the navy."

Law at time of capture governs.—"The provision of law, as to proportions, existing at the time of the capture, governs the distribution of prize money." (1864) 11 Op. Atty-Gen. 102.

Rewards in special cases.—"The courts

cannot depart from the express law because of the peculiar bravery or merit of the captors, or any of them, in a particular case." *U. S. v. Steever*, (1885) 113 U. S. 747; *The Iron-clad Atlanta*, (1865) 3 Wall. (U. S.) 425; *Porter v. U. S.*, (1882) 106 U. S. 607; *The Brig Joseph*, (1813) 1 Gall. (U. S.) 545; *The Anglia*, (1863) Blatchf. Prize Cas. 566, 1 Fed. Cas. No. 391.

Effect of removal of charge of desertion.—When a charge of desertion is removed by competent authority all the original rights of compensation are restored and the conditions are the same as if no charge had been made. *Cole v. U. S.*, (1899) 34 Ct. Cl. 447.

The share of the admiral commanding the squadron is not increased if the capture is made by his flagship nor diminished if it is made without his participation or knowledge by another ship belonging to his command. *U. S. v. Steever*, (1885) 113 U. S. 747.

Effect of disobedience to orders.—A commodore who, without authority and in disobedience of the orders of the navy department, usurped command of a United States vessel cannot claim any share of the prizes captured by that vessel. (1865) 11 Op. Atty-Gen. 147.

Share of commander not according to rank.—The commander of a single ship is by the prize law aforesaid restricted to one-tenth or three-twentieths (as the case may be) of the prize money awarded to his vessel, and cannot share according to his rank where that would give him more. (1875) 15 Op. Atty-Gen. 63.

Share of disabled commander.—"The share of the commander of a ship is the same whether he is leading in action or lying disabled in his berth." *U. S. v. Steever*, (1885) 113 U. S. 747.

Share of one in command by illegal order.—A commander on board a vessel by an illegal order of a commodore is not entitled to share in the prizes captured while thus aboard that vessel. (1865) 11 Op. Atty-Gen. 147.

A launch attached to a fleet is a single ship within the meaning of the Prize Act of 1864, and her commander is entitled to one-tenth part of the prize money awarded and not to an amount in proportion to his pay, and the other officers and the crew are entitled to share in accordance with their respective rates of pay. *U. S. v. Steever*, (1885) 113 U. S. 747, *affirming* (1884) 19 Ct. Cl. 51.

"In the service."—"These words do not necessarily mean anything more than that the distribution should be limited to those serv-

ing aboard the ship." *The Rita*, (1898) 89 Fed. Rep. 763.

"The words 'respective rates of pay in the service' signify the rates of pay actually established and to which the parties concerned were entitled at the time of the capture of the prize." (1875) 15 Op. Atty-Gen. 63.

Effect of promotion and increased rate of pay.—The promotion of a naval officer to whom prize money is distributable in proportion to his pay, conferred after the date of the capture of the prize, cannot affect the distribution of the fund, even though by the promotion he became entitled to increased pay from and including that date. In such case the rate of pay which the officer was in receipt of when the capture was made, not the increased pay resulting from the promotion afterwards bestowed, is the measure of his allowance under that provision. (1875) 15 Op. Atty-Gen. 63.

Distribution according to rate of pay at time of capture.—"The direction in the Prize Act to make distribution among inferior officers and men 'according to their respective rates of pay in the service' naturally implies the rates of their pay at the time of the capture, by relation to which the subsequent distribution is made, and not those rates as affected by promotions after the capture and before decree or distribution, although such promotions as far as affects rank, and possibly ordinary pay, date from the day of the capture." *U. S. v. Steever*, (1885) 113 U. S. 747, *affirming* (1884) 19 Ct. Cl. 51.

Effect of omission to keep books.—"The books of a ship are but the usual evidence of service on board; and neither the omission to keep books nor the neglect of the proper officer to enter names upon them can be held to cut off those lawfully assigned to duty on board, and actually doing such duty, from participation in prize money awarded to the ship." *U. S. v. Steever*, (1885) 113 U. S. 747.

Right of marines to prize money.—Marines serving with the navy and borne on the books of the ship are entitled to share in the prize money awarded to that ship. *Reid v. U. S.*, (1883) 18 Ct. Cl. 638. And see further *Gates v. U. S.*, (1903) 38 Ct. Cl. 53; *Chadwick v. U. S.*, (1901) 36 Ct. Cl. 471; *Kimball v. U. S.*, (1901) 36 Ct. Cl. 465; *Stovel v. U. S.*, (1901) 36 Ct. Cl. 392; *Engagement at Manila Bay*, (1901) 36 Ct. Cl. 212; *Engagement off Santiago Bay*, (1901) 36 Ct. Cl. 201; *Sampson v. U. S.*, (1901) 36 Ct. Cl. 194; *Sampson v. U. S.*, (1900) 35 Ct. Cl. 578; *Blandin v. U. S.*, (1900) 35 Ct. Cl. 572; *Dewey v. U. S.*, (1900) 35 Ct. Cl. 172.

An act authorizing corrections to be made in errors of prize-lists.

[Act of June 8, 1874, ch. 256, 18 Stat. L. 63.]

[*Distribution of prize moneys.*] That the second and third paragraphs of the tenth section of the navy-prize law, approved June thirtieth, eighteen hundred and sixty-four, which relates to the shares of commanders of divisions

and fleet-captains, shall apply to officers serving in those positions from April, eighteen hundred and sixty-one, (the commencement of the late war,) and the shares shall be paid in the manner as provided for division-commanders in said second paragraph, said payments to be made out of the naval pension fund; and all acts inconsistent with the provisions of this act be, and the same are hereby, repealed. [18 Stat. L. 63.]

The provisions of the Act of 1864, ch. 174, sec. 10, 13 Stat. L. 309, here referred to, are

incorporated into Revised Statutes as sec. 4631, pars. 1, 2.

See note to R. S. sec. 4630, *supra*.

Sec. 4632. [*What vessels are entitled to share.*] All vessels of the Navy within signal-distance of the vessel or vessels making the capture, under such circumstances and in such condition as to be able to render effective aid, if required, shall share in the prize; and in case of vessels not in the Navy, none shall be entitled to share except the vessel or vessels making the capture; in which term shall be included vessels present at and rendering actual assistance in the capture. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 309.

See note as to repeal under R. S. sec. 4630, *supra*.

"Within signal distance means within a distance at which signals can be so made out that communications to and from can be intelligently exchanged." The *Ella & Anna*, (1864) 2 Sprague (U. S.) 267, 8 Fed. Cas. No. 4,368.

Ability to render aid necessary.—"The words 'within signal distance' must be read in connection with the further words 'under such circumstances and in such condition as to be able to render effective aid, if required.'" Mangrove Prize Money, (1903) 188 U. S. 720.

Vessel incapable of rendering aid.—"It is not sufficient in order to entitle a vessel to share in the distribution of a prize that it was within signal distance and formed part of the force commanded by the officer who made the capture, if its situation was such that it could not have rendered any assistance in the actual conflict in which the prize was taken." The *Selma*, (1865) 1 Lowell (U. S.) 30, 21 Fed. Cas. No. 12,647.

Distance and size of signal flags.—A vessel provided with signal flags about three feet by four in size is not within signal distance of other vessels twelve or fifteen miles away, so that the latter vessels would be entitled to share in the proceeds of a prize captured by the former. Mangrove Prize Money, (1903) 188 U. S. 720.

Possibility of visibility of signals insufficient.—"Where signals were not actually seen from the mast-head and answered, and the answers seen, it is not enough to show that they might have been seen from the mast-head but not from the deck." The *Ella & Anna*, (1864) 2 Sprague (U. S.) 267, 8 Fed. Cas. No. 4,368.

Signals visible from what part of ship.—

"A vessel claiming to share with the actual captor must show her position to have been such at the time of the capture that the usual signals, if such had been made in the usual way, from the actual captor, could have been read or understood from the deck or top-gallant fore-castle of the vessel so claiming to share." The *Ella*, (1865) 2 Int. Rev. Rec. 117, 8 Fed. Cas. No. 4,367.

Signals visible under existing circumstances.—"To give such vessels a right to participate in the proceeds it must appear that they were within a distance at which signals could have been seen in the state of atmosphere and other circumstances existing at the time; and it is not enough to place them within a distance at which signals might have been seen under other circumstances." The *Ella & Anna*, (1864) 2 Sprague (U. S.) 267, 8 Fed. Cas. No. 4,368.

Rights of collier.—A vessel loaded with coal, whose crew had never been enlisted in the navy and whose armament was merely for the purpose of protection from boat attacks, but not for offensive operation, is not entitled to share in the proceeds of the prize under the provisions of this section, although she may have on board a naval officer, whose duty it was to take general charge of the vessel but not to interfere with the internal management and discipline of the ship, even though such vessel was in reserve during the action within signaling distance. *Manila Prize Cases*, (1903) 188 U. S. 254.

Burden of proof.—Where a prize is made by one vessel alone, other vessels that claim to participate in the proceeds solely on the ground that they were within signal distance, have the burden of proof upon them to establish all the facts necessary to sustain their claim. The *Ella & Anna*, (1864) 2 Sprague (U. S.) 267, 8 Fed. Cas. No. 4,368.

Sec. 4633. [*What officers are entitled to share.*] No commanding officer of a fleet or squadron shall be entitled to receive any share of prizes captured by any vessel or vessels not under his command, nor of such prizes as may have

been captured by any vessels intended to be placed under his command, before they have acted under his orders. Nor shall the commanding officer of a fleet or squadron, leaving the station where he had command, have any share in the prizes taken by ships left on such station after he has gone out of the limits of his command, nor after he has transferred his command to his successor. No officer or other person who shall have been temporarily absent on duty from a vessel on the books of which he continued to be borne, while so absent, shall be deprived, in consequence of such absence, of any prize-money to which he would otherwise be entitled. And he shall continue to share in the captures of the vessels to which he is attached, until regularly discharged therefrom. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 309.

See note as to repeal under R. S. sec. 4630, *supra*.

Officer absent on private business. — "An officer of the fleet absent with leave from the

command to which he is attached, for the purpose of attending to his private affairs, is not entitled to share in prizes captured during his absence." (1865) 11 Op. Atty.-Gen. 327.

Sec. 4634. [*Determination of shares.*] Whenever a decree of condemnation is rendered, the court shall consider the claims of all vessels to participate in the proceeds, and for that purpose shall, at as early a stage of the cause as possible, order testimony to be taken tending to show what part should be awarded to the captors, and what vessels are entitled to share; and such testimony may be sworn to before any judge or commissioner of the courts of the United States, consul or commercial agent of the United States, or notary public, or any officer of the Navy highest in rank, reasonably accessible to the deponent. The court shall make a decree of distribution, determining what vessels are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture. The decree shall recite the amount of the gross proceeds of the prize subject to the order of the court, and the amount deducted therefrom for costs and expenses, and the amount remaining for distribution, and whether the whole of such residue is to go to the captors, or one-half to the captors, and one-half to the United States. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 309. See note as to repeal under R. S. sec. 4630, *supra*.

Sec. 4635. [*Bounty for persons on board vessels sunk or destroyed.*] [*Repealed.*]

This section was as follows:

"Sec. 4635. A bounty shall be paid by the United States for each person on board any ship or vessel of war belonging to an enemy at the commencement of an engagement, which is sunk or otherwise destroyed in such engagement by any ship or vessel belonging to the United States or which it may be necessary to destroy in consequence of injuries sustained in action, of one hundred dollars, if the enemy's vessel was of inferior force, and of two hundred dollars, if of equal or superior force, to be divided among the officers and crew in the same manner as prize-money; and when the actual number of men on board any such vessel cannot be satisfactorily ascertained, it

shall be estimated according to the complement allowed to vessels of its class in the Navy of the United States; and there shall be paid as bounty to the captors of any vessel of war captured from an enemy, which they may be instructed to destroy, or which is immediately destroyed for the public interest, but not in consequence of injuries received in action, fifty dollars for every person who shall be on board at the time of such capture." Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

It was repealed by the Act of March 3, 1899, ch. 413, sec. 13, *infra*, p. 80, which abolishes bounties or prizes for destruction of enemies' vessels.

[*Bounty for destruction of enemy's vessels, how paid.*] * * * That the payment, to officers and enlisted men severally entitled, of the judgments of the Court of Claims for bounty for destruction of enemy's vessels, under section forty-six hundred and thirty-five of the Revised Statutes, be made on settlements by the Auditor for the Navy Department in the manner prescribed by law and Treasury regulation for the payment of prize money, the distribution of such individual share to be in accordance with the orders, rules, and findings of the Court of Claims. * * * [31 Stat. L. 1052.]

This is from the Deficiency Appropriation Act of March 3, 1901, ch. 831. A similar provision is contained in the Act of Feb. 14, 1902, ch. 17, 32 Stat. L. 27.

Section 4635 referred to in the text was repealed as to future cases by the provisions in the following text.

SEC. 13. [*Distribution of proceeds of prizes or payment of bounty for destruction of enemy's vessels abolished.*] * * * And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed. * * * [30 Stat. L. 1007.]

This is from the Act of March 3, 1899, ch. 413. The entire Act is set out in NAVY, vol. 5, p. 249.

SEC. 695. [*Appeals in prize causes.*] An appeal shall be allowed to the Supreme Court from all final decrees of any district court in prize causes, where the matter in dispute, exclusive of costs, exceeds the sum or value of two thousand dollars; and shall be allowed, without reference to the value of the matter in dispute, on the certificate of the district judge that the adjudication involves a question of general importance. And the Supreme Court shall receive, hear, and determine such appeals and shall always be open for the entry thereof. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310; Act of March 3, 1803, ch. 40, 2 Stat. L. 244.

Amount in dispute. — The provisions of this section limiting the appeal are superseded by Act of March 3, 1891, ch. 517, sec. 5. See JUDICIARY, vol. 4, p. 398, and note, p. 404.

"Final decree" defined. — A decree in a prize cause, which disposes of the whole matter in controversy, upon a claim filed by particular parties, which is final as to them and their rights, and final also so far as the claimants and their rights are concerned as to the United States, which leaves nothing to be litigated between the parties and awards execution in favor of the libelants against the claimants, is final within the meaning of the Judiciary Acts, and the Supreme Court has

jurisdiction of an appeal from it. *Withenbury v. U. S.*, (1867) 5 Wall. (U. S.) 819.

Appeal from Circuit Court. — Prior to this Act it was held, in *The Admiral*, (1865) 3 Wall. (U. S.) 603, that an appeal of a case in prize which had been carried from a District Court into a Circuit Court could properly be taken to the Supreme Court.

Filing notice of appeal. — "In prize cases wherever it appears that notice of appeal, or of intention to appeal, to this court was filed with the clerk of the District Court within thirty days next after the final decree therein, an appeal will be allowed to this court whenever the purposes of justice require it." *The Nuestra Señora De Regla*, (1872) 17 Wall. (U. S.) 29.

SEC. 696. [*Appeals in prize causes remaining in circuit courts.*] An appeal shall be allowed to the Supreme Court from all final decrees of any circuit court in prize causes depending therein on the thirtieth day of June, eighteen hundred and sixty-four, in the same manner, and subject to the same conditions as appeals in prize causes from the district courts. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

Sec. 4636. [*Appeals and amendments in prize cases.*] The Supreme Court may, if, in its judgment, the purposes of justice require it, allow any amendment, either in form or substance, of any appeal in prize cases, or allow a prize appeal therein, if it appears that any notice of appeal or of intention to appeal was filed with the clerk of the district court within thirty days next after the rendition of the final decree therein. [R. S.]

Act of March 3, 1873, ch. 230, 17 Stat. L. 556.

Time to appeal. — See R. S. sec. 1009, title

See similar provision of R. S. sec. 1006, JUDICIARY, vol. 4, p. 623.

title JUDICIARY, vol. 4, p. 618.

Sec. 4637. [*Powers of district court after appeal.*] Notwithstanding any appeal to the Supreme Court, the district court may make and execute all necessary orders for the custody and disposal of the prize-property; and in case of appeal from a decree of condemnation, may still proceed to make a decree of distribution so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

Disposal of funds pending appeal. — This section does not give authority to the District Court to pay out of its registry or charge the moneys or fund under appeal in the Supreme Court. It is a strongly implied inhibition to the District Court against intermeddling in any way with the actual disposal of the funds left in its charge, except in execution of positive directions of the Supreme Court. The Peterhoff, (1865) Blatchf. Prize Cas. 620, 19 Fed. Cas. No. 11,025.

Control of res on appeal. — "The removal of the cause from the District Court necessarily takes from that court all authority over the subject-matters involved in the suit and places them exclusively under the control of the paramount tribunal. The latter body alone has capacity to change the position or use of the res while it is under contestation." The Peterhoff, (1865) Blatchf. Prize Cas. 620, 19 Fed. Cas. No. 11,025.

Sec. 565. [*District court may proceed in prize causes after appeal.*] Any district court may, notwithstanding an appeal to the Supreme Court, in any prize cause, make and execute all necessary orders for the custody and disposal of the prize property, and, in case of an appeal from a decree of condemnation, may proceed to make a decree of distribution, so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

Sec. 4638. [*Security for costs.*] The court may require any party, at any stage of the cause, and on claiming an appeal, to give security for costs. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

Sec. 4639. [*Costs and expenses.*] All costs and all expenses incident to the bringing in, custody, preservation, insurance, sale, or other disposal of prize-property, when allowed by the court, shall be a charge upon such property, and shall be paid from the proceeds thereof, unless the court shall decree restitution free from such charge. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310. See notes under following section.

Sec. 4640. [*Payment of expenses from prize fund.*] No payments shall be made for any prize-fund, except upon the order of the court. All charges for work and labor, materials furnished, or money paid, shall be supported by affidavit or vouchers. The court may, at any time, order the payment, from the deposit made with the assistant treasurer in the cause, of any costs or charges accrued and allowed. When the cause is finally disposed of, the court

shall make its order or orders on the assistant treasurer to pay the costs and charges allowed and unpaid; and in case the final decree shall be for restitution, or in case there shall be no money subject to the order of the court in the cause, any costs or charges allowed by the court, and not paid by the claimants, shall be a charge upon, and be paid out of, fund the [*sic*] for defraying the expenses of suits in which the United States is a party or interested. [*R. S.*]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

Expenses of sale of prize.—A District Court of the United States is without power to make the expenses incident to a sale of prize property a charge upon the fund for defraying the expenses of suits to which the United States is a party, if there was a prize fund upon which the expenses could have been charged. *Root's Case*, (1873) 9 Ct. Cl. 212.

Order subsequent to decree, charging United States with expenses.—An order of a District Court subsequent to the decree of distribution, reciting in the words of the statute that there is "no money subject to the order of the court in the cause," and directing an expense account with regard to a prize cargo to be allowed and made a charge upon the

fund for defraying the expenses of suits to which the United States is a party, is an order made without jurisdiction and will not sustain an action in the Court of Claims. *Root's Case*, (1873) 9 Ct. Cl. 212. See also (1869) 5 Ct. Cl. 408.

Expenses of caring for property restored.—Where the property condemned as prize has been afterward restored to the claimant a bill of a warehouseman for services in regard to the property rendered under the official employment of the officers of the court becomes a charge upon and payable out of the fund for defraying the expenses of suits in which the United States is a party or interested. *Two Hundred and Eighty-two Bales Cotton*, (1864) Blatchf. Prize Cas. 610, 24 Fed. Cas. No. 14,292.

Sec. 4641. [*Payment of prize money.*] The net amount decreed for distribution to the United States, or to vessels of the Navy, shall be ordered by the court to be paid into the Treasury of the United States, to be distributed according to the decree of the court. The Treasury Department shall credit the Navy Department with each amount received to be distributed to vessels of the Navy; and the persons entitled to share therein shall be severally credited in their accounts with the Navy Department with the amounts to which they are respectively entitled. In case of vessels not of the Navy, and not controlled by any Department of the Government, the distribution shall be made by the court to the several parties entitled thereto, and the amounts decreed to them shall be divided between the owners and the ship's company, according to any written agreement between them, and in the absence of such agreement, one-half to the owners and one-half to the ship's company, according to their respective rates of pay on board; and the court may appoint a commissioner to make such distribution, subject to the control of the court, who shall make due return of his doings, with proof of actual payments by him, and who shall receive no other compensation, directly or indirectly, than such as shall be allowed him by the court. In case of vessels not of the Navy, but controlled by either Executive Department, the whole amount decreed to the captors shall be divided among the ship's company. [*R. S.*]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

Distribution of prize moneys and bounty abolished.—See Act of March 3, 1899, ch. 413, sec. *supra*, p. 80.

What "ship's company" includes.—"The granting words here are to the 'ship's company,' not to the official part of it, if it so happens that some are in the regular service of the government and some are only temporarily in that service, but to the whole of the ship's company." *The Rita*, (1898) 89 Fed. Rep. 763.

Who may share in prize money.—All those doing duty on board and borne upon the

books of a vessel chartered by the United States for naval service, whether enlisted marines or unenlisted men serving on such vessel, are entitled to share in the proceeds of a prize captured by them. *The Rita*, (1898) 89 Fed. Rep. 763.

Aliens refusing to enlist.—Unenlisted men on a chartered auxiliary cruiser are not deprived of a share in prize money by the fact that they are aliens, or because they refused to enlist in the service of the government when opportunity was given after the capture of the prize. *The Rita*, (1898) 89 Fed. Rep. 763.

Effect of additional pay to unenlisted men.

—The fact that additional pay is to be given unenlisted men in service on a chartered vessel acting as an auxiliary cruiser, such pay conditioned upon good behavior for a certain period, will not prevent such men from sharing in prize money. *The Rita*, (1898) 89 Fed. Rep. 763.

Effect of modified decree awarding salvage.

—Under a decree in prize of the District Court, certain money was paid into the treasury to the credit of the naval pension fund, and the court having at another and subsequent term so modified that decree as

to direct that the said moneys be distributed as military salvage to the captors named in the decree, it was held that the decree as thus modified was the only final decree of the court in the cause, and should alone be regarded as the decree of the court for the purpose of the distribution of the funds within the meaning of this section, and that it was the duty of the secretary of the navy and all of the officers of the United States concerned to give effect to such decree. (1876) 15 Op. Atty.-Gen. 575.

Sec. 4642. [*Distribution of bounty, salvage, etc.*] All ransom-money, salvage, bounty, or proceeds of condemned property, accruing or awarded to any vessel of the Navy, shall be distributed and paid to the officers and men entitled thereto in the same manner as prize-money, under the direction of the Secretary of the Navy. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

See note under section 4641, *supra*.

* **Salvage on recapture.**—See section 4652, *infra*, p. 85.

Sec. 4643. [*Assignments, etc., of prize money, and bounty.*] Every assignment of prize or bounty money due to persons enlisted in the naval service, and all powers of attorney or other authority to draw, receipt for, or transfer the same, shall be void, unless the same be attested by the captain, or other commanding officer, and the paymaster. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 310.

Bounty and prize money for destruction of

enemies' vessels abolished.—See sec. 13 of the Act of March 3, 1899, ch. 413, *supra*, p. 80.

Sec. 4644. [*Accounts of clerks of district courts.*] The clerk of each district court shall render, to the Secretary of the Treasury and the Secretary of the Navy, a semi-annual statement of all the sums allowed by the court, and ordered to be paid, within the previous half-year, to the district attorney and prize-commissioners for services, and to marshals for fees and commissions; and he shall, in all prize-causes in the district, for the purpose of the final decree of distribution, ascertain and keep an account of the amount deposited with the assistant treasurer, subject to the order of the court, in each prize-cause, and the amounts ordered to be paid therefrom as costs and charges, and the residue for distribution; and shall send copies of all final decrees of distribution to the Secretary of the Treasury and the Secretary of the Navy; and shall draw the orders of the court for the payment of all costs and allowances, and for the distribution of the residue. For these services he shall be entitled to receive the sum of twenty-five dollars in each prize-cause, which shall be in full for the services required by this action. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 312.

Clerk's fees on money deposited in registry of court.—Where, by agreement of the parties, the money on stipulation was deposited

in the registry of the court, instead of with the assistant treasurer, the clerk of the court is not allowed a commission thereon. *The Adula*, (1901) 127 Fed. Rep. 849.

Sec. 4645. [*Allowances and commissions to marshals.*] The marshal shall be allowed his actual and necessary expenses for the custody, care, preservation, insurance, sale, or other disposal of the prize-property, and for executing any order of the court respecting the same, and shall have a commission of one-

quarter of one per centum on vessels, and of one-half of one per centum on all other prize-property, calculated on the gross proceeds of each sale; and if, after he has had any prize-property in his custody, and has actually performed labor and incurred responsibility for the care and preservation thereof, the same is taken by the United States for its own use without a sale, or if it is delivered on stipulation to the claimants, he shall, in case the same is condemned, be entitled to one-half the above commissions on the amount deposited by the United States to the order of the courts, or collected upon the stipulation. No charges of the marshal for expenses or disbursements shall be allowed, except upon his oath that the same have been actually and necessarily incurred for the purpose stated. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 312.

Extra compensation to marshal.—A marshal may be allowed extra compensation for services outside his district in conveying a

prize to another district for sale, but such compensation is limited by the time actually employed outside of his district. *The Adula*, (1901) 127 Fed. Rep. 849.

Sec. 4646. [*Compensation of district attorney and prize commissioners.*]

The district attorney and prize commissioners, except the naval officer, shall be allowed a just and suitable compensation for their respective services in each prize-cause, to be adjusted and determined by the court, and to be paid as costs in the cause. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 312.

Necessity of authorization for extra compensation.—As the district attorney is compensated by fees and emoluments limited by law to a fixed salary, he cannot have any additional allowance for extra services, within the scope of his appointment, unless such extra reward is expressly authorized by law.

The Anna, (1863) Blatchf. Prize Cas. 337, 1 Fed. Cas. No. 402.

Apportionment by direct decree.—The court will not apportion to the district attorney, by a direct decree, the amount of the costs taxed for his services in each prize suit which ought to be paid to him toward his aggregate salary. *The Anna*, (1863) Blatchf. Prize Cas. 337, 1 Fed. Cas. No. 402.

Sec. 4647. [*Accounts of district attorney and prize commissioner.*]

Each district attorney and prize-commissioner, except the naval officer, shall render to the Attorney-General an annual account of all sums he shall have received for all services in prize-causes within the previous year; and the district attorney shall be allowed to retain therefrom a sum not exceeding three thousand dollars a year, in addition to the maximum compensation allowed to be retained by him; under the provisions of Title XIII, "THE JUDICIARY," or in addition to any salary he may receive in lieu of such maximum compensation; and each such prize-commissioner shall be allowed to retain a sum not exceeding three thousand dollars a year, which shall be in full for all his official services in prize-causes; and any excess over those respective amounts shall be paid by the officer receiving the same into the Treasury of the United States, and shall be credited to the fund for paying naval pensions. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 312; Act of June 22, 1870, ch. 150, 16 Stat. L. 164.

Title 13 of the Revised Statutes consists of secs. 530-1093. The provisions particularly applicable to district attorneys are found in ch. 14, secs. 767-799, and together with later statutes repealing, amending, or supplementing the same are given in JUDICIAL OFFICERS, vol. 4, p. 61 *et seq.*

As a direction to the court to allow.—The amount named in this statute as a compensation to prize commissioners is a maximum limit of their earnings in any one year, and

is in no sense a direction to the court to allow that sum. *The Adula*, (1901) 127 Fed. Rep. 849.

How taxed.—The court will tax the costs of the district attorney in prize cases under the existing law on the written assent of the counsel for the captors and the deposition of the district attorney, proving the performance of the service and its reasonable value, and will leave it to the disbursing officers of the treasury to see that no more is retained by that officer than the sum given him by law. *The Anna*, (1863) Blatchf. Prize Cas. 337, 1 Fed. Cas. No. 402.

The Act of March 25, 1862, sec. 3 (12 Stat. 375), did not abolish the restrictions on the compensation of the district attorney or give to him for his personal use the amounts taxed

to him for services in prize cases. The Anna, (1863) Blatchf. Prize Cas. 337, 1 Fed. Cas. No. 402.

Sec. 4648. [*Compensation of special counsel.*] The court may allow such compensation as it deems just under the circumstances of each case to any special counsel for captors, not being the district attorney or any of his assistants, whether appointed by an Executive Department or by captors, for services actually rendered in the cause, to be paid as costs, in whole or in part, either from the entire fund or from the portion awarded to the captors; but no such allowance shall be made, except for services rendered on matters as to which the party the counsel represents has an adverse interest to the United States, or an interest otherwise proper in the opinion of the court to be represented by special counsel, or for services rendered in a contestation between parties claiming to participate in the distribution of the proceeds. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 313. See note to R. S. sec. 4630, *supra*.

Sec. 4649. [*Payment of fees of special counsel.*] Fees of special counsel in prize-cases incurred or authorized by any Department, or for the defense of captors against demands for damages made by claimants in the district court, not paid by claimants, nor from the prize-fund in the particular cause, and audited and allowed by the Department incurring or authorizing them, and by the Solicitor of the Treasury, shall be a charge upon, and paid out of, the funds appropriated for defraying the expenses of suits in which the United States is a party or interested. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 313. See note to R. S. sec. 4630, *supra*.

Sec. 4650. [*Commissions of auctioneers.*] The auctioneers employed to make sales of prize-property shall be entitled to receive commissions by a scale to be established by the Secretary of the Navy, not to exceed, in any case, one-half of one per centum on any sum exceeding ten thousand dollars on vessels, nor one per centum on that sum on other prize-property, which shall be in full for expenses, as well as for services; and in case no such scale shall be established, they shall be entitled to receive such compensation as the court shall deem just under the circumstances of each case. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 313.

Sec. 4651. [*Payment of fees of witnesses.*] Whenever the court shall allow fees to any witness in a prize-cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the same shall be paid by the marshal, and shall be repaid to him from any money deposited to the order of the court in the cause; and any amount not so repaid the marshal shall be allowed as witness-fees paid by him in cases in which the United States is a party. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 313.

Sec. 4652. [*Recaptures.*] When any vessel or other property shall have been captured by any force hostile to the United States, and shall be recaptured, and it shall appear to the court that the same had not been condemned as prize before its recapture, by any competent authority, the court shall award a meet and competent sum as salvage, according to the circumstances of each case.

If the captured property belonged to the United States, it shall be restored to the United States, and there shall be paid from the Treasury of the United States the salvage, costs, and expenses ordered by the court. If the recaptured property belonged to persons residing within or under the protection of the United States, the court shall adjudge the property to be restored to its owners, upon their claim, on the payment of such sum as the court may award as salvage, costs, and expenses. If the recaptured property belonged to any person permanently resident within the territory and under the protection of any foreign prince, government, or state in amity with the United States, and by the law or usage of such prince, government, or state, the property of a citizen of the United States would be restored under like circumstances of recapture, it shall be adjudged to be restored to such owner, upon his claim, upon such terms as by the law or usage of such prince, government, or state would be required of a citizen of the United States under like circumstances of recapture; or when no such law or usage shall be known, it shall be adjudged to be restored upon the payment of such salvage, costs, and expenses as the court shall order. The whole amount awarded as salvage shall be decreed to the captors, and no part to the United States, and shall be distributed as in the case of proceeds of property condemned as prize. Nothing in this Title shall be construed to contravene any treaty of the United States. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 314.

The principle of *jus postliminii* so far as it relates to captured vessels belonging to American citizens is embodied in this section. *Oakes v. U. S.*, (1895) 30 Ct. Cl. 378.

Capture and recapture necessary.—This Act applies only to recaptures from an enemy. In order to come within its purpose and its very words the property in question must "have been taken by an enemy of the United

States," and "retaken" by a public or private vessel of the United States. Where there has been no capture there can be no recapture. *Oakes v. U. S.*, (1899) 174 U. S. 793.

Property purchased by enemy.—This Act does not apply to property which has come into the enemy's possession by purchase or otherwise with the consent of the owner or of his agent. *Oakes v. U. S.*, (1899) 174 U. S. 793.

Sec. 4752. [*Prize money accruing to the United States to remain a fund for pensions.*] All money accruing or which has already accrued to the United States from sale of prizes shall be and remain forever a fund for the payment of pensions to the officers, seamen, and marines who may be entitled to receive the same; and if such fund be insufficient for the purpose, the public faith is pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied to the making of further provision for the comfort of the disabled officers, seamen, and marines. [R. S.]

Act of July 17, 1862, ch. 204, 12 Stat. L. 607.

Sec. 4759. [*Privateer pension fund; how derived.*] Two per centum on the net amount, after deducting all charges and expenditures, of the prize-money arising from captured vessels and cargoes, and on the net amount of the salvage of vessels and cargoes recaptured by the private armed vessels of the United States, shall be secured and paid over to the collector or other chief officer of the customs at the port or place in the United States at which such captured or recaptured vessels may arrive; or to the consul or other public agent of the United States residing at the port or place, not within the United States, at which such captured or recaptured vessels may arrive. And the moneys arising therefrom are pledged by the Government of the United States as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of such persons as may be wounded and disabled on board of the private armed vessels of the

United States, in any engagement with the enemy, to be assigned and distributed in such manner as is or may be provided by law. [R. S.]

Act of June 26, 1812, ch. 107, 2 Stat. L. 763.

Sec. 4760. [*To be paid into the Treasury, etc.*] The two per centum reserved in the hands of the collectors and consuls by the preceding section, shall be paid to the Treasury, under the like regulations provided for other public money, and shall constitute a fund for the purposes provided for by that section. [R. S.]

Act of Feb. 13, 1813, ch. 22, 2 Stat. L. 799.

Sec. 5441. [*Delaying or defrauding captor or claimant, etc., of prize property.*] Every person who willfully does any act or aids or advises in the doing of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment not more than five years, or both. [R. S.]

Act of June 30, 1864, ch. 174, 13 Stat. L. 315.

PRIZE FIGHTING.

Act of Feb. 7, 1896, ch. 12.

Sec. 1. Prize Fighting, and Fights Between Men and Animals, Forbidden.

2. "Pugilistic Encounter" Defined.

An Act To prohibit prize-fighting and pugilism and fights between men and animals and to provide penalties therefor, in the Territories and District of Columbia.

[*Act of Feb. 7, 1896, ch. 12, 29 Stat. L. 5.*]

[SEC. 1.] [*Prize fighting, and fights between men and animals, forbidden.*] That any person who, in any of the Territories or the District of Columbia, shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not less than one nor more than five years. [29 Stat. L. 5.]

SEC. 2. [*"Pugilistic encounter" defined.*] By the term "pugilistic encounter," as used in this bill, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly. [29 Stat. L. 5.]

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Sec. 3709. [*Advertisements for proposals — exceptions — opening and submitting bids — acceptance or rejection.*] All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals. And the advertisement for such proposals shall be made by all the Executive Departments, including the Department of Labor, the United States Fish Commission, the Interstate Commerce Commission, the Smithsonian Institution, the Government Printing Office, the government of the District of Columbia, and the superintendent of the State, War, and Navy building, except for paper and materials for use of the Government Printing Office, and materials used in the work of the Bureau of Engraving and Printing, which shall continue to be advertised for and purchased as now provided by law, on the same days and shall each designate two o'clock post meridian of such days for the opening of all such proposals in each Department and other Government establishment in the city of Washington; and the Secretary of the Treasury shall designate the day or days in each year for the opening of such proposals and give due notice thereof to the other Departments and Government establishments. Such proposals shall be opened in the usual way and schedules thereof duly prepared and, together with the statement of the proposed action of each Department and Government establishment thereon, shall be submitted to a board, consisting of one of the Assistant Secretaries of the Treasury and Interior Departments and one of the Assistant Postmasters-General, who shall be designated by the heads of said Departments and the Postmaster-General respectively, at a meeting to be called by the official of the Treasury Department, who shall be chairman thereof, and said board shall carefully examine and compare all the proposals so submitted and recommend the acceptance or rejection of any or all of said proposals. And if any or all of such proposals shall be rejected, advertisements for proposals shall again be invited and proceeded with in the same manner. [R. S.]

Act of March 2, 1861, ch. 84, 12 Stat. L. 220.

All that portion of the section beginning with the words "and the advertisement for such proposals," etc., to the end was added by the Act of Jan. 27, 1894, ch. 22, 28 Stat. L. 33, entitled "An Act to amend section thirty-seven hundred and nine of the Revised Statutes relating to contracts for supplies in the Departments at Washington."

See further amendments and limitations of the section set forth in the text following.

Effect of amendment. — The first two sentences of this section, as amended by the Acts of Jan. 27, 1894, ch. 22, and April 21, 1894, ch. 61, apply to purchases anywhere in the United States. The remaining three sentences apply only to purchases in the city of Washington. (1894) 21 Op. Atty-Gen. 59.

Effect of amendment on contract for im-

mediate delivery.—The amendment of this section regulating the advertisement and award of contracts did not affect that portion of the section applicable when the public exigency requires immediate delivery. (1895) 21 Op. Atty-Gen. 181.

Power of United States to contract.—"The United States, being a body politic, may within the sphere of the constitutional powers confided to it, and through the instrumentality of the proper department to which those powers are confided, enter into contracts not prohibited by law, and appropriate to the just exercise of those powers." U. S. v. Tingey, (1831) 5 Pet. (U. S.) 115.

Character of government as party.—When a government enters into a contract with an individual, it deposes as to the matter of the contract its constitutional authority, and exchanges the character of a legislator for that of a moral agent with the same rights and obligations as an individual. Lyons v. U. S., (1895) 30 Ct. Cl. 353.

Effect of other acts.—No part of this section is expressly repealed by the provisions of section 96 of the Act of Jan. 12, 1895, providing for the contracting by the postmaster-general for envelopes, but that Act must be construed *in pari materia* with this section and with R. S. sec. 3718. (1895) 21 Op. Atty-Gen. 181.

Notice of statutory limitations upon power to contract.—A contractor dealing with the government is chargeable with notice of all statutory limitations placed upon the powers of public officers. But there is a difference between those powers expressly defined by statute and those which rest upon the discretion confided by law to an officer. Where a statute expressly defines the power it is notice to all the world, but where it confides a discretion to an officer the party dealing with him, in good faith, may assume that the discretion is properly exercised. If the discretion be vested in a superior while the transaction is with his subordinate the contractor may assume that the discretion has been properly exercised, and that the subordinate is acting in accordance with his superior's orders. Thompson's Case, (1873) 9 Ct. Cl. 187.

Statutory requirements mandatory.—In absence of any exigency of fact or of one determined by the officer in charge of a public work, or of one that can be judicially inferred, the provision of this section requiring advertisement for supplies is mandatory and contracts made in violation thereof are void. Schneider v. U. S., (1884) 19 Ct. Cl. 547 (citing Clark v. U. S., (1877) 95 U. S. 539; U. S. v. Speed, (1868) 8 Wall. (U. S.) 77; Henderson's Case, (1868) 4 Ct. Cl. 75; Wentworth's Case, (1869) 5 Ct. Cl. 302).

To secure competition.—The provisions of this section are in the line of a wise public policy, insuring to the government the advantage of competition in making contracts for supplies. (1897) 22 Op. Atty-Gen. 1.

What contracts included.—The provisions of this section require advertisements for proposals in the case of all purchases and contracts for supplies or services in any of

the departments of the government, except for personal services, and except when the public exigencies require the immediate delivery of the article or performance of the service. The amendatory acts do not modify this requirement, but simply provide a mode for carrying it into effect. (1897) 22 Op. Atty-Gen. 1.

Executory contracts.—The law requires that executory contracts for supplies and materials for the departments shall be duly advertised. (1863) 6 Op. Atty-Gen. 99.

Where advertised.—This section does not require the advertising to be done in the District of Columbia. (1897) 21 Op. Atty-Gen. 595.

Advertisements addressed to whom.—While there is no express provision as to the persons with whom the postmaster-general shall contract, or to whom he shall by advertisement address his proposals, he is justified in doing so to those who are able to do the work or furnish supplies which he needs in his department. In such a matter he will exercise his own discretion as to that which shall be for the best interests of the public, and will carry out the policy of the statute by thus limiting his advertisements, when he shall deem it expedient to do so. (1877) 15 Op. Atty-Gen. 226.

The manner of advertising is left by the law to the discretion of the department advertising. No particular form is prescribed. (1877) 15 Op. Atty-Gen. 226.

Where immediate delivery is necessary to the wants of the public service the article required must be obtained by open purchase; that is, by purchase at the place where articles of the description are usually bought and sold, and in the mode in which such purchases are ordinarily made between individual and individual. (1829) 2 Op. Atty-Gen. 257.

In absence of public exigency.—Where the public exigencies do not require the immediate delivery of the articles, or performance of the service, it is necessary previously to advertise for proposals respecting the same. (1829) 2 Op. Atty-Gen. 257.

Immediate performance necessary to excuse advertising.—The power here given to make contracts, without advertisement, plainly contemplates only such contracts as the urgent necessities of the service may demand and in cases where the public interests would suffer by the delay attendant upon advertising. The only exception is when "immediate performance" is required by the public exigency, and that is the test by which the necessity of advertising is to be determined. (1861) 10 Op. Atty-Gen. 28.

Immediate use necessary for purchase in open market.—Purchases in open market cannot be resorted to, except in cases of and in reference to such articles as are wanted for use so immediate as not to permit of contracts by advertisement. But such immediate want cannot usually occur in reference to hemp. (1846) 4 Op. Atty-Gen. 475.

Exigency of time only.—The "public exigency," contemplated by this section, is one of time only. While the officer intrusted

with making the contract may be entitled himself to adjudicate whether or not the facts are such as to require immediate delivery of the articles contracted for, or the immediate rendering of the service desired, yet the exigency cannot be extended beyond that of time only, and if he adjudicates any other state of facts to be an exigency he is not proceeding within the authority given him by law. (1877) 15 Op. Atty.-Gen. 253.

Ordinary diligence in making contract for immediate delivery.—“Immediate delivery,” under this Act, requires of a quartermaster that openness, diligence, prudence, and care which an individual might be supposed to exercise were he buying goods in just such an exigency and under just such circumstances. Therefore when a quartermaster, buying goods under extraordinary circumstances, does as an energetic business man would have done in his own business, if acting without money, with shaken credit, under a pressing emergency, in a place where but part of his needs could be supplied, endeavoring to give great publicity to his purchases and to invite competition, the conditions of the statute are fulfilled. *Child's Case*, (1868) 4 Ct. Cl. 177.

Substantial compliance sufficient.—This statute intends that in a proper exigency supplies for the army should be procured by lawful means, and is not to be construed as declaring illegal contracts which, as nearly as possible, comply with its requirements. *Child's Case*, (1868) 4 Ct. Cl. 177.

Application of section to contractor.—The provision in this section requiring articles or services to be obtained by “open purchase or contract at the price and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals,” does not apply to a contractor with the United States. (1877) 15 Op. Atty.-Gen. 253.

Whether the contractor owns the article contracted for at the time of the making of the contract cannot be inquired into. *Friedenstein v. U. S.*, (1899) 35 Ct. Cl. 6.

Contracts with enemies.—No person can make a valid contract in behalf of the United States unless expressly or impliedly authorized by statute to do so; but, if so authorized, the right to make such a contract is not necessarily limited to contracts with persons who are not enemies of the United States. Whether the right to make the contract is a right to make it with an enemy depends upon the true construction of the statutes authorizing the making of the contract and not upon any general principles of law. (1870) 13 Op. Atty.-Gen. 314.

Supplies for navy.—Under these sections (R. S. 3709, 3718), supplies of every name and nature for the navy are to be purchased by contract upon advertisement, except in cases when the public exigency will not permit of delay, and then by open purchase as between individuals. (1895) 21 Op. Atty.-Gen. 181.

Postage stamps are supplies within the meaning of this section. (1898) 22 Op. Atty.-Gen. 40.

The postmaster-general should advertise for proposals for the work of engraving and printing United States postage stamps, for which work the bureau of engraving and printing may be permitted to compete. (1898) 22 Op. Atty.-Gen. 40.

Proposals for furnishing stamps limited.—An advertisement for proposals for furnishing the post office department with postage stamps may, in the discretion of the postmaster-general, be limited to “steel plate engravers and plate printers;” the purpose of limitation being to confine the submission of proposals to such persons only as can satisfactorily furnish the articles needed. (1877) 15 Op. Atty.-Gen. 226.

Paper and materials for government printing office.—This section did not apply to paper and materials for the government printing office, and the acts amendatory thereof enlarged it in respect to this office only so as to apply to fuel, ice, stationery, and miscellaneous supplies. (1895) 21 Op. Atty.-Gen. 137.

The Act of Jan. 12, 1895, only provides for printing and binding public documents; the purchases by the public printer therein contemplated are paper and materials for that purpose, and such as do not come within this section as amended. (1895) 21 Op. Atty.-Gen. 137.

Purchase of seeds.—If not obligatory on the secretary of agriculture to purchase seeds, trees, etc., conformably to the provisions of this section, it is certainly competent for him to make the purchases conformably to the statute, the right to reject any and all bids being reserved. (1895) 21 Op. Atty.-Gen. 162.

Seals for packages in bond.—Contracts for the purchase by the government of seals used to secure packages entered for transportation in bond must be awarded upon advertisement. (1896) 21 Op. Atty.-Gen. 304.

Seals purchased by carriers.—“Locks and seals used to secure packages while being transported in bond, paid for and owned by common carriers, are not required to be purchased upon advertisement.” (1896) 21 Op. Atty.-Gen. 304.

Articles for different uses.—In *The International Co.'s Case*, (1877) 13 Ct. Cl. 209, it was held that an advertisement by the secretary of the treasury for seal locks to be used on railroad cars in revenue service is sufficient compliance with this section to authorize a contract by a subsequent secretary for locks to be used on the cars and on bonded warehouses.

Supplies, etc., for Columbia Institution for Deaf and Dumb.—It was held in (1897) 22 Op. Atty.-Gen. 1, by Attorney-General Joseph McKenna, that the Columbia Institution for the Deaf and Dumb is in the department of the interior, so as to make the provisions of this section applicable to it in making purchases and contracts for supplies or services; but in (1896) 21 Op. Atty.-Gen. 349, the contrary was expressly held by acting Attorney-General Holmes Conrad.

Contract for future supply.—A contract without advertisement for a future supply of

wood for the use of the army is within the prohibition of this Act and therefore void. *McKinney's Case*, (1868) 4 Ct. Cl. 537.

Contract requiring years for execution.—The secretary of war may not under this section, without advertising for proposals, make a contract involving the expenditure of nearly \$200,000, and requiring years for its execution. (1861) 10 Op. Atty-Gen. 28.

Emergency supplies during rebellion.—The purchase of military supplies for a military emergency during the war of the rebellion was governed exclusively by the provisions of the Act of July 4, 1864, 13 Stat. L. 394, and not by the Act of March 2, 1861, 12 Stat. L. 220 (R. S. sec. 3709), nor by the Act of June 2, 1862, 12 Stat. L. 411 (R. S. sec. 3744). *Cobb's Case*, (1871) 7 Ct. Cl. 471.

Contract in military emergency.—A military emergency cannot be measured by precise rules. It may continue equally over a period of months. In such a case, when supplies cannot be procured by immediate purchase literally in open market, and the quartermaster charged with procuring them contracts without advertisement for their delivery within thirty days, the contract is valid if it be as immediate a purchase as the circumstances admit of. *Thompson's Case*, (1873) 9 Ct. Cl. 187.

Purchase of envelopes in emergency.—Constructing the provisions of section 96 of the Act of Jan. 12, 1895, providing for the purchase of envelopes, stamped or otherwise, for all departments in connection with this section and R. S. sec. 3710, that section of the Act of 1895 has no application when an exigency may require an immediate delivery of envelopes to a particular department and the public service might be seriously impaired by the necessity of a requisition upon the postmaster-general. In the event of an exigency requiring an immediate delivery of envelopes, the provisions of this section govern, and the head of the department in which the exigency exists may make the purchases required by the exigency. (1895) 21 Op. Atty-Gen. 181.

Immediate construction of railroad cars.—In *Mowry's Case*, (1866) 2 Ct. Cl. 68, it was held that a contract in time of great public exigency and peril, immediately to construct one hundred railroad cars at an agreed price, fifty to be delivered in eighteen days and fifty in thirty days, calls for an immediate performance within the meaning of this section.

Relief of sufferers.—Where the service required was under a statute making an appropriation to relieve a suffering condition of the people of the territory, it must be held that the Act intended immediate execution, and contracts thereunder would be valid though not reduced to writing. *Pacific Steam Whaling Co. v. U. S.*, (1901) 36 Ct. Cl. 106.

Purchase from middlemen for immediate delivery.—A contract for the purchase of naval supplies for immediate use from a middleman, at a higher price than the manufacturer's price, is not a violation of this section where there was not sufficient time to learn the place of manufacture and the manufacturer's price, and public exigency demanded

immediate delivery; and the contractor may recover the contract price, although he did not deal in or possess such article at the time of the sale; but if there be ample time to learn the manufacturer's price and place of manufacture, and the contractor and purchasing agent do not avail themselves of the opportunity, only a fair and reasonable value for such articles can be recovered by the contractor, without regard to the contract price. *Wentworth's Case*, (1869) 5 Ct. Cl. 302.

A contract for personal service is one by which the individual contracted with renders his personal service to the government through its agents, thus himself becoming the servant of the government. (1877) 15 Op. Atty-Gen. 235.

Personal service of contractor only.—The personal service mentioned in this section must be personal service of the party contracted with, and not personal service which he shall employ. (1876) 15 Op. Atty-Gen. 538.

Contract in part for services.—Although a contract may require in some of its details personal service, this does not make the whole contract one for personal service within the meaning of this section. (1876) 15 Op. Atty-Gen. 538.

Contract for secret services.—An action cannot be maintained against the government in the Court of Claims upon a contract for secret services during a war, made between the President and the claimant. The publicity produced by an action would itself be a breach of a contract of that kind and thus defeat a recovery. *Totten v. U. S.*, (1875) 92 U. S. 105, *affirming* (1873) 9 Ct. Cl. 506.

Contract for service requiring trained skill.—In all contracts for service which presupposes trained skill and experience, the public officer who employs the service must be allowed to exercise a judicious discrimination, and to select such as, in his judgment, possess the required qualifications. (1862) 10 Op. Atty-Gen. 261.

A contract for surveying Indian reservations is a contract for "personal services," and, therefore, may be made without previous advertisement for proposals. (1862) 10 Op. Atty-Gen. 261.

Modifications in bids.—Where an advertisement was published, calling for proposals for performance of certain work for the government, with the specification that it be begun on or before Oct. 1, 1892, and be concluded on or before Dec. 31, 1893, and where one of the proposals stated that the bid was that the entire work was to be completed on or before June 1, 1894, and provided for stopping that work in certain contingencies, such modifications in the proposals were inconsistent with the specifications and with the spirit and intent of this section. (1892) 20 Op. Atty-Gen. 496.

Signature and modification of firm bid.—Where a bid, in which the name of the firm is signed by typewriter, followed by the signature of the only member of the firm, is, before acceptance, modified by telegram, the modified bid, if authentic, would, upon acceptance be-

fore withdrawal, bind the bidder. (1898) 22 Op. Atty.-Gen. 45.

Modification of bid prior to opening.—A bidder under an advertisement for sealed proposals has the right, previous to the opening of the bids, to modify his bid by telegram, and the bill so modified, upon acceptance before withdrawal, will bind the bidder. (1898) 22 Op. Atty.-Gen. 45.

Omission of immaterial words.—Where the advertisement requires the proposals to be made on blank forms furnished by the department the omission or erasure of immaterial words in the proposals of a bidder does not affect the validity of his bid. (1877) 15 Op. Atty.-Gen. 226.

Confirmation of telegraphed proposal.—While it is customary to confirm by letter a telegraphed proposition, such confirmation is not essential. (1898) 22 Op. Atty.-Gen. 45.

Withdrawal of bid.—In the absence of any special statutory provision to the contrary a bidder for a government contract may withdraw his bid at any time until notice of acceptance. (1894) 21 Op. Atty.-Gen. 56.

Effect of designating hour of opening.—The designation of two o'clock P. M. "for the opening of all such proposals in each department," means only that such proposals shall not be opened before two o'clock P. M. (1897) 21 Op. Atty.-Gen. 546.

No bids opened prior to time.—By designating a certain hour on a fixed day "for the opening of all such proposals," both the government and the bidders have secured to them the advantage of a prescribed moment prior to which no bids can be opened. (1897) 21 Op. Atty.-Gen. 546.

Proposals received after time of opening.—The statute does not say that all proposals must be received prior to two o'clock P. M., but it designates that hour for the opening of the proposals. To be sure, a proposal received after that hour, under circumstances which warranted the belief that it had been prepared and submitted in the light of the proposals submitted by the other bidders, which had already been opened and made known, should not be received or entertained; but a proposal received under conditions which preclude the possibility of such unfairness should not be rejected because it happens to be received by the board of award a few minutes after two o'clock P. M. (1897) 21 Op. Atty.-Gen. 546.

The object of the government is to secure fairness and impartiality in awarding government contracts; and where proper notice has been given by advertisement, and the time and the place for opening such proposals designated and published, one submitting his bid or proposal and forwarding the same by due course of mail, by which it should have been delivered before two o'clock P. M., should not be deprived of his right to participate in the competitive bidding because his letter containing the bid did not reach the board of award until a few minutes after two P. M. (1897) 21 Op. Atty.-Gen. 546.

Effect of acceptance.—When a bid which binds a bidder to perform is accepted, and he is ready and able to perform, the government cannot escape liability by refusing to enter

into the formal written contract contemplated by the terms of its acceptance. It is liable to the same extent as it would have been had the formal contract been executed. *Garfield's Case*, 11 Ct. Cl. 322, *affirmed* by the Supreme Court. See (1875) 11 Ct. Cl. 602.

The acceptance by an executive officer, acting within the scope of his authority, of a proposal by an individual creates a contract having the same force and effect that a formal written agreement would have if one had been signed by the parties. *McCullum's Case*, (1881) 17 Ct. Cl. 93.

When award is made.—An award of a contract by the issuance of an order of the postmaster-general, in the usual way, and its transmission to the bidder, thus indicating the acceptance of his proposal, is sufficient, and when received by the latter the award thus made is beyond recall, and the agreement is complete and binding upon the government. It makes no difference in such case that a more formal contract was contemplated to be entered into, but has not been executed by the bidder, if the failure be not attributable to his default. (1877) 15 Op. Atty.-Gen. 226.

Advertisement and proposals as part of the contract.—The advertisement for proposals, and the proposals in response thereto, do not form any part of the subsequent contract and cannot be admitted in evidence to contradict or vary the terms thereof. *Harvey's Case*, (1872) 8 Ct. Cl. 501.

Modified contract.—A modification "where the interests of the government will not be prejudiced or any statutory provision violated thereby" may well be provided for in every contract to which the government is a party; and a contract so modified is not such a new contract as must be preceded by an advertisement for proposals from bidders. (1895) 21 Op. Atty.-Gen. 207 (*citing* U. S. v. *Corliss Steam Engine Co.*, (1875) 91 U. S. 321; (1885) 18 Op. Atty.-Gen. 101; *Ferris v. U. S.*, (1893) 28 Ct. Cl. 332).

Extension of contract requiring advertisement.—Where an advertisement for proposals for furnishing the government with stamped envelopes, etc., stated a definite term, and did not provide for any extension of the contract beyond the term, but the contract contained a provision that it might be extended or modified by mutual agreement, and it was subsequently modified and extended repeatedly so as to embrace several successive years, such extensions were each new contracts which should have been preceded by advertisements for proposals. (1895) 21 Op. Atty.-Gen. 207. See also (1869) 13 Op. Atty.-Gen. 174.

Contract for preparing material under advertisement for purchase.—Advertisement for proposals having been made for the rough stone from the quarry, but not for the cutting and dressing of it before a contract therefor, the cutting and dressing are not within the exception of "personal services," and such advertisement does not meet the requirements of this section as regards the contract for such cutting and dressing. (1877) 15 Op. Atty.-Gen. 253.

Second contract for different material.—Where one contract is to furnish sandstone for a public building at a designated price, and another contract is to substitute marble at a different price, the material being the sole subject-matter of either agreement, the latter contract cannot be regarded as a modification of the former, and it will require a new advertisement. *Schneider v. U. S.*, (1884) 19 Ct. Cl. 547.

Acceptance of inferior articles.—“If on account of the impossibility of readvertising, or of the contractor procuring better articles, in time to meet the exigencies, authority is lodged anywhere to accept supplies inferior to the requirements of a contract, it is vested in the officer or officers charged with the duty of making the purchases, and the rights of third parties are not to be affected by the correctness of the conclusions of such officers as to the necessity which compels such acceptance.” (1882) 17 Op. Atty-Gen. 384.

Contract to supply troops and others does not include Indians.—Where a commissary of subsistence is without statutory authority to contract for the support of Indians, a contract entered into by him for beef cattle in such numbers and at such time as may be required, founded on proposals for supplying beef to the troops and others at a certain camp, cannot be construed to include cattle subsequently needed for Indians at the same camp, and no action will lie for breach if the commissary subsequently, under authority, enters into a contract with a third party for supplying such Indians. The first contract will be construed to have been limited in purpose to the subsistence of troops and ordinary camp followers. *Ryan's Case*, (1872) 8 Ct. Cl. 272, *affirmed* by Supreme Court. See 10 Ct. Cl. 115.

Suspension of work under contract and compensation for partial performance.—Where the secretary of the navy may enter into contracts for the construction, armament, or equipment of a vessel of war, he may suspend the work contracted for if the public interests require its suspension; and when he orders such suspension he may agree with the contractor upon the compensation to be paid for partial performance of the contract, and such a settlement, lawfully made, without fraud, is binding on the government. *U. S. v. Corliss Steam Engine Co.*, (1875) 91 U. S. 321, *affirmed* (1874) 10 Ct. Cl. 494.

Proper exercise of discretion.—This section, “while requiring such advertisement as the general rule, invests the officer charged with the duty of procuring supplies or services with a discretion to dispense with advertising if the exigencies of the public service require immediate delivery or perform-

ance. It is too well settled to admit of dispute at this day that where there is a discretion of this kind conferred on an officer or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract cannot be made to depend on the degree of wisdom or skill which may have accompanied its exercise.” (1882) 17 Op. Atty-Gen. 384. See also *U. S. v. Speed*, (1868) 8 Wall. (U. S.) 77, *affirming* (1866) 2 Ct. Cl. 429.

Contracts under discretionary power to expend appropriations.—Where the expenditure of an appropriation is especially confided to the discretion of the secretary of the interior, he has discretionary power to award the contracts therefor without advertising, as provided in this section. *Fowler's Case*, (1867) 3 Ct. Cl. 43.

Increase of expense by eight-hour condition.—This and the following sections make no provision for the length of the day's work by the employees of the contractors, and a public officer who should let a contract for a larger sum than would be otherwise necessary, by reason of a condition that a contractor's employees should only work eight hours a day, would directly violate the law. (1890) 19 Op. Atty-Gen. 685.

Validity of unadvertised contracts.—A public contract not founded upon advertisement is at most only voidable, and when the government allows it to be performed, and does not question its validity, a third person cannot come in and set up that it was void at law. *Driscoll's Case*, (1877) 13 Ct. Cl. 15, *reversed* by Supreme Court on other grounds (1877) 96 U. S. 421.

Ratification of unadvertised contract.—An officer who in giving out a contract has failed to comply with the statutory provision requiring advertisement previous to letting the contract, cannot, by permitting performance thereunder to proceed to any extent, make such contract obligatory upon the government. (1876) 15 Op. Atty-Gen. 538.

Goods delivered under void contract.—Where goods have been actually sold and delivered for the use and benefit of the government, an action may be maintained for the value thereof, though the contract under which they were delivered was irregular or void. *Belt's Case*, (1879) 15 Ct. Cl. 105.

No advertisement as defense to performed contract.—When a contract has been mutually performed and the contractor sues to recover a part of his compensation erroneously withheld, it is not a defense that the contract was illegal because not founded upon advertisement and proposal, the price claimed being reasonable. *Mudgett's Case*, (1873) 9 Ct. Cl. 467.

SEC. 2. [Advertisements, etc., under R. S. sec. 3709 limited.] That the Act entitled “An Act to amend section thirty-seven hundred and nine of the Revised Statutes relating to contracts for supplies in the Departments at Washington,” approved January twenty-seven, eighteen hundred and ninety-four, be, and the same is hereby, so amended that the provisions thereof shall apply

only to advertisements for proposals for fuel, ice, stationery, and other miscellaneous supplies to be purchased at Washington for the use of the Executive Departments and other Government establishments therein named; and no advertisements made or contracts awarded or to be awarded thereon since January twenty-seven, eighteen hundred and ninety-four, in accordance with the laws in force prior to said date, shall be declared to be illegal or invalid for non-compliance with said law of January twenty-seventh, eighteen hundred and ninety-four. [28 Stat. L. 62.]

This is from the Deficiency Appropriation Act of April 21, 1894, ch. 61. The Act mentioned in the text is incorporated into R. S. sec. 3709, *supra*, p. 93, as stated in the note thereunder.

"Miscellaneous supplies" explained. — Fuel, ice, and stationery are staples required by every department and every branch of the

service. The word "miscellaneous" must be restricted to other supplies of the same general nature; in other words, to that class of commodities which must be purchased on a considerable scale and used alike by many or all of the various departments and government establishments in the city of Washington. (1894) 21 Op. Atty.-Gen. 59.

[Purchase or service for Department of Agriculture.] * * * That hereafter section thirty-seven hundred and nine of the Revised Statutes of the United States shall not be construed to apply to any purchase or service rendered in the Department of Agriculture when the aggregate amount involved does not exceed the sum of fifty dollars. * * * [30 Stat. L. 957.]

This is from the Department of Agriculture Appropriation Act of March 1, 1899, ch. 325.

Sec. 3710. [Opening bids.] Whenever proposals for supplies have been solicited, the parties responding to such solicitation shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made. [R. S.]

Res. No. 8, of Jan. 31, 1868, 15 Stat. L. 246.

Sec. 3711. [Inspection of fuel in District of Columbia — appointment of inspectors, etc.] It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person, to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made from among the persons authorized to be employed in such Department or branch of the service. The person appointed under this section shall ascertain that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel. [R. S.]

This section was amended to read as above by the Legislative, Executive, and Judicial Appropriation Act of March 15, 1898, ch. 68, sec. 6, 30 Stat. L. 316.

The section originally read as follows:

"Sec. 3711. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite

or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made. The person so appointed shall, before entering upon the duty of inspector, weigher, and

measurer, and to the satisfaction of the appointing officer, give bond, with not less than two sureties, in the penal sum of five thousand dollars, and with condition that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. The inspector, weigher, and measurer so appointed shall be entitled to receive from the venders of fuel weighed and measured by him twenty cents for each ton of coal weighed, and nine cents for each cord of wood measured by him. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel." Act of July 11, 1870, ch. 243, 16 Stat. L. 229.

It was first amended by the Act of March 2, 1895, ch. 177, sec. 6, 28 Stat. L. 808, to take effect on and after July 1, 1895, to read as follows:

"Sec. 3711. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bitumin-

ous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person, to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made from among the persons authorized to be employed in such Department or branch of the service: *Provided*, That the weigher and measurer of the Navy Department may be appointed outside of said Department, and that such weigher and measurer shall give bond and be paid as heretofore provided by law. The person appointed under this section shall ascertain that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel." [28 Stat. L. 808.]

As thus amended it was again amended by the Act of March 15, 1898, ch. 68, sec. 6, as given in the text.

Sec. 3712. [*Appointments to be notified to accounting officer.*] The proper accounting officer of the Treasury shall be furnished with a copy of the appointment of each inspector, weigher, and measurer appointed under the preceding section. [R. S.]

Act of July 11, 1870, ch. 243, 16 Stat. L. 229.

Sec. 3713. [*No payment without certificate.*] It shall not be lawful for any accounting officer to pass or allow to the credit of any disbursing officer in the District of Columbia any money paid by him for purchase of anthracite or bituminous coal or for wood, unless the voucher therefor is accompanied by a certificate of the proper inspector, weigher, and measurer that the quantity paid for has been determined by such officer. [R. S.]

Act of July 11, 1870, ch. 243, 16 Stat. L. 229.

Sec. 3714. [*Contracts for the military or naval service, how controlled.*] All purchases and contracts for supplies or services for the military and naval service shall be made by or under the direction of the chief officers of the Departments of War and of the Navy, respectively. And all agents or contractors for supplies or service as aforesaid shall render their accounts for settlement to the accountant of the proper department for which such supplies or services are required, subject, nevertheless, to the inspection and revision of the officers of the Treasury in the manner before prescribed. [R. S.]

Act of July 16, 1798, ch. 85, 1 Stat. L. 610.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by adding the closing provision of the section beginning with the words, "And all agents or contractors," etc., as above given. See further TREASURY DEPARTMENT.

Who may contract for navy department. — All contracts and purchases entered into and made by the navy department must be entered into and made by or under the direc-

tion of the secretary. (1829) 2 Op. Atty.-Gen. 257.

Express contracts by commanding general. — The authority of the general commanding a military department, to bind the government by express contract in time of actual hostility and of great public danger, must be derived from the Constitution and the laws of the United States. *Fremont Contract Cases*, (1866) 2 Ct. Cl. 1.

Authority of commanding general to ap-

point purchasing agents.—The responsibility and discretion appertaining to the purchase of military supplies are vested in the officers of the quartermaster's department, therefore a commanding general cannot appoint a civilian purchasing agent of the government nor invest him with discretion to make express contracts, nor transfer to him the responsibility which the law enforces upon the quartermaster; nor has such agent power to bind the government by express contract. *Fremont Contract Cases*, (1866) 2 Ct. Cl. 1.

An officer of volunteers neither mustered into the United States service nor specially employed to make contracts for subsisting his troops cannot bind the United States by express contracts. *Kirkham's Case*, (1868) 4 Ct. Cl. 224.

Repudiation of contract by quartermaster-general.—An order of the secretary of war directing the quartermaster-general to suspend making any new contracts for an article until it is tested does not authorize the

quartermaster-general to repudiate the contracts already entered into for such article. *Mann's Case*, (1867) 3 Ct. Cl. 410.

Amounts due for war vessel.—The secretary of the navy has authority to settle the amounts due under a contract for the building of a war vessel and demands for extra work agreed upon and expenses incurred because of the department's action of which the government has received the benefit. *Myerle v. U. S.*, (1896) 31 Ct. Cl. 126.

Recovery for services or property received under unauthorized contract.—Where the proper officers of the government receive services or property under a contract made by one who was not an authorized agent of the government and use such services or property for a lawful purpose, so that the government derives a lawful benefit therefrom, the contractor may recover the actual value of the property sold or service rendered. *Fremont Contract Cases*, (1866) 2 Ct. Cl. 1; *Livingston's Case*, (1867) 3 Ct. Cl. 135.

Sec. 3715. [*Contracts for army subsistence.*] Contracts for subsistence supplies for the Army, made by the Commissary-General, on public notice, shall provide for a complete delivery of such articles, on inspection, at such places as shall be stipulated. [R. S.]

Act of April 14, 1818, ch. 61, 3 Stat. L. 427; Act of March 3, 1835, ch. 49, 4 Stat. L. 780; Act of March 2, 1861, ch. 84, 12 Stat. L. 220.

Approval of contracts by commissary-general.—Prior to the passage of this Act, it was held, in *Floyd's Case*, (1866) 2 Ct. Cl. 429, that where there is no legal necessity for the approval of a contract by the commissary-general of subsistence it need not be transmitted to him, and though it be made

in terms subject to his approval yet his approval may be inferred from his letters and acts and need not be indorsed formally on the contract.

Slaughter and packing of pork.—In *Floyd's Case*, (1866) 2 Ct. Cl. 429, it was held, under the acts prior to this section, that the commissary department was authorized to contract for the slaughter and packing of pork for the use of the army.

[*Exceptional articles of subsistence stores.*] * * * And hereafter exceptional articles of subsistence stores for officers and enlisted men, which are to be paid for by them, regardless of condition upon arrival at posts, may, under regulations to be prescribed by the Secretary of War, be obtained by open purchase without advertising. * * * [28 Stat. L. 658.]

This is from the Army Appropriation Act of Feb. 12, 1895, ch. 83, under the appropriation for "subsistence of the army."

Sec. 3716. [*Advertisements for supplies for Quartermaster's Department.*] The Quartermaster's Department of the Army, in obtaining supplies for the military service, shall state in all advertisements for bids for contracts that a preference shall be given to articles of domestic production and manufacture, conditions of price and quality being equal, and that such preference shall be given to articles of American production and manufacture produced on the Pacific coast, to the extent of the consumption required by the public service there. In advertising for Army supplies the Quartermaster's Department shall require all articles which are to be used in the States and Territories of the Pacific coast to be delivered and inspected at points designated in those States and Territories; and the advertisements for such supplies shall be

published in newspapers of the cities of San Francisco, in California, and Portland, in Oregon. [R. S.]

Act of July 13, 1866, ch. 176, 14 Stat. L. 92.

[*Purchase of supplies by Quartermaster's and Commissary Departments — transportation of stores.*] * * * That hereafter all purchases of regular and miscellaneous supplies for the Army furnished by the Quartermaster's Department and by the Commissary Department for immediate use shall be made by the officers of such Department, under direction of the Secretary of War, at the places nearest the points where they are needed, the conditions of cost and quality being equal: *Provided also*, That all purchases of said supplies, except in cases of emergency, which must be at once reported to the Secretary of War for his approval, shall be made by contract after public notice of not less than ten days for small amounts for immediate use, and of not less than from thirty to sixty days whenever, in the opinion of the Secretary of War, the circumstances of the case and conditions of the service shall warrant such extension of time. The award in every case shall be made to the lowest responsible bidder for the best and most suitable article, the right being reserved to reject any and all bids. The Quartermaster-General and the Commissary General of Subsistence shall report promptly all purchases of supplies made by his Department, with their cost-price and place of delivery, to the Secretary of War, for transmission to Congress annually: *Provided further*, That in time of peace the number of draught and pack animals in the Quartermaster's Department of the Army shall not exceed six thousand, and that all transportation of stores by private parties for the Army shall be done by contract, after due legal advertisement, except in cases of emergency, which must be at once reported to the Secretary of War for his approval. [23 Stat. L. 109.]

This and the two following sections are from the Army Appropriation Act of July 5, 1864, ch. 217.

Partial repeal. — The provisions in this and subsequent sections of this Act as to the report of purchases were directly repealed by the Act of March 2, 1895, ch. 177, sec. 1, given in ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 925. The provision as to the number of draught and pack animals was superseded by the Act of Sept. 22, 1888, ch. 1027, sec. 1, *infra*, p. 104.

When emergency may arise. — An emergency may arise not only before the required public notice can be given, but after it has once been given, in consequence of the failure to receive any bids or proposals; in either case, the purchase thereupon would be an emergency purchase and come under the requirement of the statute for an immediate report to the secretary of war for his approval. (1886) 18 Op. Atty.-Gen. 349.

Machinery, stores, and patented articles. —

When parts of machinery or of stores or ranges or patented articles are needed, these supplies are required by the statute to be purchased in the same way as other quartermaster's supplies, *i. e.*, by contract, after public notice, except in cases of emergency in which cases the purchase should be reported to the secretary of war for his approval. (1886) 18 Op. Atty.-Gen. 349.

Slaughter, etc., of pork. — The war department, by its proper officers, may make a valid contract for the slaughtering, curing, and packing of pork, when that is the most expedient mode of securing army supplies of that kind. *U. S. v. Speed*, (1868) 8 Wall. (U. S.) 77, *affirming* (1866) 2 Ct. Cl. 429.

Contract with citizen of rebellious state. — "An express contract made in behalf of the United States during the rebellion, with a citizen and resident of an insurrectionary state, for quartermaster's supplies, if the officer making it acted under competent authority, is valid." (1870) 13 Op. Atty.-Gen. 314.

[*Purchase of horses for cavalry, artillery, and Indian scouts.*] * * * That hereafter all purchases of horses under appropriations for horses for the cavalry and artillery and for the Indian scouts shall be made by contract, after legal advertisement, by the Quartermaster's Department, under instructions of the Secretary of War, the horses to be inspected under the orders of the

General commanding the Army; and no horse shall be received and paid for until duly inspected. The Quartermaster-General shall report to the Secretary of War promptly, for transmission to Congress annually, all purchases and contracts for horses, mules, and military supplies for the Army made by his Department. * * * [23 Stat. L. 109.]

See note to preceding section.

Repeal of the provision requiring a report of all purchases and contracts, see note to preceding section.

The Army Appropriation Act of March 2, 1889, ch. 372, 25 Stat. L. 830, contains the following provision:

"For the purchase of horses for the cavalry and artillery, and for the Indian scouts, and for such infantry as may be mounted, and the expenses incident thereto, * * * dollars: *Provided*, That hereafter the number of horses purchased under this appropriation, added to the number on hand, shall not at any time exceed the number of enlisted men and Indian scouts in the mounted service; and that no part of this appropriation shall be paid out for horses not purchased by contract, after competition duly invited by the Quartermaster's Department, and an inspection by such Department, all under the direction and authority of the Secretary of War." * * * [25 Stat. L. 830.]

This provision, except the word "hereafter," has annually appeared in the army appropriation acts since Act of June 30, 1886, ch. 574, 24 Stat. L. 97, and is repeated also without the word "hereafter" in the Acts down to March 15, 1898, ch. 69, 30 Stat. L. 323, with some slight changes. The insertion of the word "hereafter" indicates an intention of making the provision permanent. Frequent instances are found in the Statutes at Large, in which a provision is repeated annually in appropriation acts until, by the insertion of the word "hereafter," permanence is given and the provision is not subsequently repeated. In this instance and in several others the provision subsequently appears, contrary to the usual rule. We know of no decision as to the permanency of the provision under such circumstances.

The Act of March 15, 1898, ch. 69, 30 Stat. L. 323, contains a provision as follows:

"HORSES FOR CAVALRY AND ARTILLERY:

For the purchase of horses for the cavalry and artillery, and for the Indian scouts, and for such infantry and members of the Hospital Corps in field campaigns as may be required to be mounted, and the expenses incident thereto, * * * dollars: *Provided*, That the number of horses purchased under this appropriation, added to the number on hand, shall not at any time exceed the number of enlisted men and Indian scouts in the mounted service, and that no part of this appropriation shall be paid out for horses not purchased by contract after competition duly invited by the Quartermaster's Department, and an inspection by such department, all under the direction and authority of the Secretary of War." [30 Stat. L. 323.]

These provisions were suspended by the Act of June 7, 1898, ch. 392, as amended by the Acts of March 3, 1899, ch. 436, and Feb. 24, 1900, ch. 24, with other provisions of the same Act as stated in a note under the provision relating to "Printing for Quartermaster's Department," *infra*, p. 104.

The provisions of the Army Appropriation Act of June 30, 1902, ch. 1328, on this subject are as follows:

"HORSES FOR CAVALRY AND ARTILLERY: For the purchase of horses for the cavalry and artillery, and for the Indian scouts, and for such infantry and members of the Hospital Corps in field campaigns as may be required to be mounted, and the expenses incident thereto, * * * dollars: *Provided*, That the number of horses purchased under this appropriation, added to the number now on hand, shall be limited to the actual needs of the mounted service, and unless otherwise ordered by the Secretary of War, no part of this appropriation shall be paid out for horses not purchased by contract after competition duly invited by the Quartermaster's Department, and an inspection under the direction and authority of the Secretary of War." [32 Stat. L. 515.]

[Purchase of means of transportation.] * * * That hereafter all purchases of horses, mules, or oxen, wagons, carts, drays, ships and other seagoing vessels, also all other means of transportation, shall be made by the Quartermaster's Department, by contract, after due legal advertisement except in cases of extreme emergency; and hereafter all purchases and contracts of every kind made by the Quartermaster's Department shall be promptly reported to the Secretary of War, for transmission annually to Congress: *Provided also*, That hereafter the Quartermaster-General and his officers, under his instructions, wherever stationed, shall receive, transport, and be responsible for all property turned over to them, or any one of them, by the officers or agents of any Government survey, for the National Museum, or for the civil or naval departments of the Government, in Washington or elsewhere, under the regulations

governing the transportation of Army supplies, the amount paid for such transportation to be refunded or paid by the Bureau to which such property or stores pertain. * * * [23 Stat. L. 110.]

See note to preceding sections.

[SEC. 1.] [*Limit of draught and pack animals.*] * * * Army transportation: For transportation of the Army, including * * * the purchase and hire of draught and pack animals: * * * *Provided*, That hereafter no part of this appropriation shall be expended in the purchase for the Army of draught animals until the number on hand shall be reduced to five thousand, and thereafter shall only be expended for the purchase of a number sufficient to keep the supply up to five thousand. * * * [25 Stat. L. 486.]

This is from the Army Appropriation Act of Sept. 22, 1888, ch. 1027.

The provisions of this Act were suspended

together with provisions of the Act of March 15, 1898, ch. 69, as set forth in note thereto under the following text.

[*Printing for Quartermaster's Department.*] * * * That hereafter no part of the appropriations for the Quartermaster's Department shall be expended on printing unless the same shall be done by contract, after due notice and competition, except in such cases as the emergency will not admit of the giving notice for competition: * * * [30 Stat. L. 322.]

This is from the Act of March 15, 1898, ch. 69, entitled "An Act making appropriations for the support of the army for the fiscal year ending June thirtieth, eighteen hundred and ninety-nine." It is a repetition of a similar provision occurring in the annual appropriation acts of Feb. 12, 1895, ch. 83, 28 Stat. L. 658; March 16, 1896, ch. 58, 29 Stat. L. 64; March 2, 1897, ch. 362, 29 Stat. L. 613.

The provisions of the above section were, by the Act of June 7, 1898, ch. 392, 30 Stat. L. 433, "suspended in the discretion of the secretary of war during the existing war."

This was amended by the Act of March 3, 1899, ch. 436, 30 Stat. L. 1350, to read "suspended for such further time as, in the discretion of the Secretary of War, may be found necessary, or until otherwise provided by Congress, not longer, however, than March first, nineteen hundred." The latter provision was amended by Act of Feb. 24, 1900, ch. 24, 31 Stat. L. 32, to read "suspended for such further time as, in the discretion of the Secretary of War, may be found necessary, or until otherwise authorized by Congress, not longer, however, than June thirtieth, nineteen hundred and one."

[*Printing for Quartermaster's Department.*] * * * That no part of the appropriations for the Quartermaster's Department shall be expended on printing, unless the same shall be done by contract after due notice and competition, except in such cases as the emergency will not admit of the giving notice of competition; and in cases where it is impracticable to have the necessary printing done by contract the same may be done, with the approval of the Secretary of War, by the hire of the necessary labor for the purpose: * * * [32 Stat. L. 514.]

This and the following section are from the Army Appropriation Act of June 30, 1902, ch. 1328.

A similar provision was contained in the Act of March 2, 1901, ch. 803, 31 Stat. L. 905.

[*Supplies for departments and posts of the Army.*] * * * That hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and

posts of the Army and of the branches of the Army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered; but every open-market emergency purchase made in the manner common among business men which exceeds in amount two hundred dollars shall be reported for approval to the Secretary of War under such regulations as he may prescribe. [32 Stat. L. 514.]

This is from the Army Appropriation Act of June 30, 1902, ch. 1328, immediately following the provision in the preceding text. A similar provision was contained in the Act of March 2, 1901, ch. 803, 31 Stat. L. 905.

The Army Appropriation Act of March 15, 1898, ch. 69, 30 Stat. L. 322, contained a provision as follows: " * * * That after advertisement all the supplies for the use of the various departments and posts of the Army and of the branches of the Army service shall hereafter be purchased where the same can be purchased the cheapest, in the markets of the United States, quality and cost of transportation and the interest of the Government considered, except that purchases may be made in open market, in the manner common among business men, when the ag-

gregate amount required does not exceed two hundred dollars, but every such purchase shall be immediately reported to the Secretary of War." * * * [30 Stat. L. 322.]

This provision down to the words "except that" has appeared in every army appropriation act since Act of Sept. 22, 1888, ch. 1027, 25 Stat. L. 481. The balance of the section has appeared since Act of Aug. 6, 1894, ch. 228, 28 Stat. L. 238, except that "in the markets of the United States" was first added by Act of March 2, 1897, ch. 362, 29 Stat. L. 613. The provision as it appears in the above note was suspended by the Act of June 7, 1898, ch. 392, and its amendments as set forth *supra*, p. 104, in note. It is now superseded by the provisions in the text.

[*Technical and scientific supplies for Military Academy.*] * * * That all technical and scientific supplies for the departments of instruction of the Military Academy shall be purchased by contract or otherwise, as the Secretary of War may deem best. [25 Stat. L. 12.]

This is from the Military Academy Appropriation Act of May 1, 1888, ch. 212. The same provision has been repeated in the subsequent appropriation acts of Feb. 12, 1889, ch. 137, 25 Stat. L. 666; March 2, 1889, ch. 372, 25 Stat. L. 829; June 20, 1890, ch. 437, 26 Stat. L. 168; March 2, 1891, ch. 495, 26 Stat. L. 821; July 14, 1892, ch. 172, 27 Stat. L. 172; March 1, 1893, ch. 186, 27 Stat. L.

520; July 26, 1894, ch. 167, 28 Stat. L. 155; Jan. 16, 1895, ch. 29, 28 Stat. L. 628; March 6, 1896, ch. 48, 29 Stat. L. 52; Feb. 10, 1897, ch. 214, 29 Stat. L. 524; March 5, 1898, ch. 38, 30 Stat. L. 259; Feb. 27, 1899, ch. 210, 30 Stat. L. 895; June 6, 1900, ch. 792, 31 Stat. L. 652; March 2, 1901, ch. 804, 31 Stat. L. 918; June 28, 1902, ch. 1300, 32 Stat. L. 416.

[*Expenditures on buildings, military posts, or grounds.*] * * * That hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post, or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates by the Quartermaster's Department; and the erection, construction, and repair of all buildings and other public structures in the Quartermaster's Department shall, as far as may be practicable, be made by contract, after due legal advertisement: * * * [27 Stat. L. 484.]

This and the following section are from the Army Appropriation Act of Feb. 27, 1893, ch. 168.

"This provision, without the word 'hereafter,' but otherwise without important change, has occurred in every army appropriation Act since 1884. See 23 Stat. L. 111, 360; 24 Stat. L. 97, 399; 25 Stat. L. 487, 830; 26 Stat. L. 155, 776; 27 Stat. L. 180, 484." *Compilers' note*, 2 *Supp. R. S.* 94.

"A claim for extras may not be allowed until the conditions precedent have been com-

plied with. Therefore the payment of a claim for extras where no contract therefor is made in writing and where the expenditures amounting to over five hundred dollars were not submitted to the secretary of war for approval may not be allowed under R. S. secs. 3714, 3744, construed with the Act of April 10, 1878, ch. 58, 20 Stat. 36; Act of Feb. 27, 1893, ch. 168, 27 Stat. 484, and supplemented by par. 825 of the army regulations." *Churchyard v. U. S.*, (1900) 100 Fed. Rep. 920.

[*Construction of quarters for hospital stewards.*] * * * For construction of quarters for hospital stewards at military posts already established and occupied, * * * dollars: *Provided*, That hereafter the posts at which such quarters shall be constructed shall be designated by the Secretary of War, and such quarters shall be built by contract, after legal advertisement, whenever the same is practicable. [27 Stat. L. 484.]

See note to prior section.

"This provision, without the word 'hereafter,' has appeared in every army appropriation Act since 1886. See 24 Stat. L. 98,

399; 25 Stat. L. 486, 831; 26 Stat. L. 154, 777; 27 Stat. L. 181, 484." *Compilers' note*, 2 *Supp. R. S.* 94.

[*Advertisement not required for medicines and medical supplies.*] * * * That hereafter so much of section thirty-seven hundred and nine, Revised Statutes, as requires advertisement before purchase shall not apply to the purchase of medicines and medical supplies. * * * [27 Stat. L. 485.]

This is from the Army Appropriation Act of Feb. 27, 1893, ch. 168, under the provisions for appropriations for "medical department." The same provision, without the word "here-

after," appeared in the Army Appropriation Act of July 16, 1892, ch. 195, 27 Stat. L. 181. R. S. sec. 3709 is given *supra*, p. 93.

[*Contracts for fortifications in advance of appropriations.*] * * * Gun and mortar batteries: For construction of fortifications, * * * : *Provided*. That contracts may be entered into, under the direction of the Secretary of War, for materials and work for construction of fortifications, to be paid for as appropriations may from time to time be made by law, to an additional sum in the aggregate not to exceed two million five hundred thousand dollars. * * * [29 Stat. L. 257.]

This is from the Act of June 6, 1896, ch. 338, "An Act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement

of heavy ordnance for trial and service, and for other purposes."

Barracks and quarters for artillery for sea-coast defenses. — See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

[*Purchases of steel.*] * * * That no contract for the expenditure of any portion of the money herein provided, or that may be hereafter provided for the purchase of steel shall be made until the same shall have been submitted to public competition by the Department by advertisement. * * * [26 Stat. L. 769.]

This is from the Act of Feb. 24, 1891, ch. 283, "An Act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of

heavy ordnance for trial and service, and for other purposes," following the appropriation for "armament of fortifications."

[*Purchase of steel for coast defense guns.*] * * * That no contract for oil-tempered and annealed steel for high-power coast-defense guns and mortars shall be made at a price exceeding twenty-three cents per pound; * * * [29 Stat. L. 642.]

This is from the Act of March 3, 1897, ch. 384, "An Act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes."

"It has not yet been decided whether this

provision is permanent or limited only to the appropriation contained in this Act. It is repeated from 1896, June 6, ch. 338, 29 Stat. L. 257, except that the price is reduced from twenty-four to twenty-three cents per pound." *Compilers' note, 2 Supp. R. S. 596.*

[*Ordnance and ordnance stores and supplies.*] * * * Purchase of ordnance and ordnance stores and supplies may be made by the Ordnance Department in open market, in the manner common among business men, when the aggregate of the amount required does not exceed two hundred dollars, but every such purchase shall be immediately reported to the Secretary of War. * * * [28 Stat. L. 242.]

This is from the Army Appropriation Act of Aug. 6, 1894, ch. 228, under the appropriation for "ordnance service." This pro-

vision superseded a similar provision of Act of July 16, 1892, ch. 195, 27 Stat. L. 182.

Sec. 3717. [*Separate proposals required for works, etc.*] Whenever the Secretary of War invites proposals for any works, or for any material or labor for any works, there shall be separate proposals and separate contracts for each work, and also for each class of material or labor for each work. [R. S.]

Act of June 23, 1866, ch. 138, 14 Stat. L. 73.
River and harbor works. — See exception,

Act of Sept. 19, 1890, ch. 907, sec. 2, 26 Stat. L. 452, under RIVERS, HARBORS, AND CANALS.

An act to authorize the Secretary of War to prescribe rules and regulations to be observed in the preparation, submission, and opening of bids for contracts under the War Department.

[Act of April 10, 1878, ch. 58, 20 Stat. L. 36.]

[*Secretary of War to make rules as to bids for contracts, require bonds, etc.*] That the Secretary of War is hereby authorized to prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under the War Department. And he may require every bid to be accompanied by a written guarantee, signed by one or more responsible persons, to the effect that he or they undertake that the bidder, if his bid is accepted, will, at such time as may be prescribed by the Secretary of War or the officer authorized to make a contract in the premises, give bond, with good and sufficient sureties, to furnish the supplies proposed or to perform the service required. If after the acceptance of a bid and a notification thereof to the bidder he fails within the time prescribed by the Secretary of War or other duly authorized officer to enter into a contract and furnish a bond with good and sufficient security for the proper fulfillment of its terms, the Secretary or other authorized officer shall proceed to contract with some other person to furnish the supplies or perform the service required, and shall forthwith cause the difference between the amount specified by the bidder in default in the proposal and the amount for which he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal to be charged up against the bidder and his guarantor or guarantors, and the sum may be immediately recovered by the United States for the use of the War Department in an action of debt against either or all of such persons. [20 Stat. L. 36, 22 Stat. L. 487.]

This Act was amended by the Act of March 3, 1883, ch. 120, 22 Stat. L. 487, by striking out all provisions following the words "War

Department" first appearing therein and inserting the provisions as they appear above. The provision stricken out was as follows:

"And he may require any bid to be accompanied by a bond in such penal sum as he may deem advisable, with good and sufficient security, conditioned that the bidder will enter into a contract agreeably to the terms of his bid, if the same be awarded to him within sixty days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within the said period of sixty days."

Amending other acts.—In *Churchyard v. U. S.*, (1900) 100 Fed. Rep. 920, this Act was cited as an amendment to R. S. secs. 3714, 3744.

Formal defects.—In specific cases the

secretary of war is authorized to waive formal defects in bids and bonds in order to secure the public advantage resulting from competitive bidding. (1897) 21 Op. Atty.-Gen. 469.

Insertion of dates.—A bond accompanying a bid to build certain public works, duly signed, sealed, and delivered, the separate proposals constituting the bid and the bond being on printed blanks bound together and consecutively paged in print, is not sufficiently defective as to be regarded as invalid because the dates of the bid and bond are not inserted in the blanks left for that purpose in printing the instrument. (1897) 21 Op. Atty.-Gen. 469.

SEC. 2. [*Secretary of War to give preference to domestic materials and labor.*] That in all contracts for material for any public improvement, the Secretary of War shall give preference to American material; and all labor thereon shall be performed within the jurisdiction of the United States. [18 Stat. L. 455.]

This is from the Army Appropriation Act of March 3, 1875, ch. 133.

Sec. 3718. [*Naval supplies to be furnished by contract.*] All provisions, clothing, hemp, and other materials of every name and nature, for the use of the Navy, and the transportation thereof, when time will permit, shall be furnished by contract, by the lowest bidder, as follows: In the case of provisions, clothing, hemp, and other materials, the Secretary of the Navy shall advertise, twice a week for two weeks or longer, not to exceed four weeks, or once a week for two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy, in one or more of the principal papers published in the place where such articles are to be furnished, for sealed proposals for furnishing the same, or the whole of any particular class thereof, specifying the classes of materials and referring bidders to the several chiefs of Bureaus, who will furnish them with printed schedules, giving a full description of each and every article, with dates of delivery, and so forth. In the case of transportation of such articles, he shall advertise for a period of not less than five days. All such proposals shall be kept sealed until the day specified in such advertisement for opening the same, when they shall be opened by or under the direction of the officer making such advertisement, in the presence of at least two persons. The person offering to furnish any class of such articles, and giving satisfactory security for the performance thereof, under a forfeiture not exceeding twice the contract price in case of failure, shall receive a contract for furnishing the same. [R. S.]

Act of March 3, 1843, ch. 83. 5 Stat. L. 617; Act of Sept. 28, 1850, ch. 80. 9 Stat. L. 513; Act of Aug. 5, 1854, ch. 268, 10 Stat. L. 585; Act of April 11, 1866, ch. 45, 14 Stat. L. 38.

This section was amended to read as above by the Act of March 3, 1893, ch. 212, 27 Stat. L. 724. It was first amended by the Act of June 30, 1890, ch. 640, 26 Stat. L. 197, by striking out the words "once a week, for at least four weeks," originally appearing therein, and inserting in lieu thereof the words "twice a week for two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy."

It was again amended by the Act of July 19, 1892, ch. 206, 27 Stat. L. 243, so as to read "twice a week for two weeks or longer, not to exceed four weeks, or once a week for four weeks, in the discretion of the Secretary of the Navy."

It was again amended by the Act of March 3, 1893, ch. 212, 27 Stat. L. 724, so as to read "twice a week for two weeks or longer, not to exceed four weeks, or once a week for two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy," as given in the text.

Substantial compliance sufficient.—The controlling purpose of these provisions and

R. S. sec. 3719 plainly is to secure the contract to the lowest bidder who will honestly perform it. The directions of the statutes as to the manner of advertising for and receiving proposals, and as to the form of the proposals themselves, are intended to accomplish this purpose, and a failure by the lowest bidder to comply with them ought not to exclude his proposal from consideration, unless it be such an omission as will deprive the government of the requisite security against loss by violation or nonperformance of the contract. If the proposal exhibit a substantial compliance with the provision of the law as to its form, and if it be the lowest bid, its rejection for an immaterial informality would be in disregard of the meaning of Congress. (1861) 10 Op. Atty-Gen. 140.

Purpose of articles included.—As provisions, clothing, and hemp, for the use of the navy, were specifically mentioned, Congress was merely providing for the current and necessary expenses of that branch of the service. The general phraseology, "and other materials of every name and nature," was designed to include the other articles demanded for the same purpose. (1849) 5 Op. Atty-Gen. 89.

Award to the lowest bidder.—The secretary of the navy is obliged to give contracts for supplies to the lowest bidder who fills the requirements as to security, etc., but he is the person charged with the duty of ascertaining the facts in this regard, and his decision is not reviewable in any court. (1894) 21 Op. Atty-Gen. 56.

Modification of terms of contract.—The

navy department has not the right in awarding the contract to the lowest bidder to modify its terms in regard to the time of delivery, or any other of its material elements. (1844) 4 Op. Atty-Gen. 334.

Contract with patentee.—"If the article needed be one for which the secretary of the navy may negotiate without advertising for proposals, it would seem that the secretary may contract with a patentee of the article to furnish the needed supply." (1889) 19 Op. Atty-Gen. 407.

Patentee lowest bidder.—If the patentee of an article is the lowest bidder for furnishing that article the secretary of the navy may accept his proposal and make a contract with him. (1889) 19 Op. Atty-Gen. 407.

Contracts entered into by infants with the officers of the government are valid and obligatory, notwithstanding such infancy, unless the infants themselves take measures to avoid them. (1844) 4 Op. Atty-Gen. 333.

Contracts for hemp.—The secretary of the navy in contracting for water-rotted hemp, for the use of the navy, is restricted in the manner of purchase by this Act, which requires him to advertise for the article, to receive bids, and to award the contract for it to the lowest bidder. (1846) 4 Op. Atty-Gen. 475.

Renewal of contract.—In (1843) 4 Op. Atty-Gen. 283, it was held that since the Act of March 3, 1843, the secretary of the navy is not competent to renew a contract which has expired without advertising as is required by the first section of that Act.

[*Gun steel and armor for Navy.*] * * * That no contract for the purchase of gun steel or armor for the Navy shall hereafter be made until the subject-matter of the same shall have been submitted to public competition by the Department by advertisement. [27 Stat. L. 732.]

This is from the Naval Appropriation Act of March 3, 1893, ch. 212. The provision is repeated from the appropriation acts of

March 2, 1891, ch. 494, 26 Stat. L. 815, and July 19, 1892, ch. 206, 27 Stat. L. 251.

[*Classification, etc., and issue of naval supplies.*] * * * For expenses of arranging, classifying, consolidating, and cataloguing supplies for the Navy, herein provided for and now on hand, ten thousand dollars; and all supplies purchased with moneys appropriated by this act shall be deemed to be purchased for the Navy and not for any bureau thereof, and these supplies, together with all supplies now on hand, shall be arranged, classified, consolidated, and catalogued, and issued for consumption or use, under such regulations as the Secretary may prescribe, without regard to the bureau for which they were purchased. [26 Stat. L. 205.]

This is from the Naval Appropriation Act of June 30, 1890, ch. 640.

[*Naval supplies, how purchased and issued.*] * * * All supplies hereafter purchased with moneys appropriated for any branch of the naval estab-

ishment shall be purchased, classified, and issued for consumption or use subject to the provisions contained in the act making appropriations for the naval service, approved June thirtieth, eighteen hundred and ninety, in reference to supplies therein provided for and on hand. * * * [26 Stat. L. 807.]

This is from the Naval Appropriation Act of March 2, 1891, ch. 494.

The provisions of the Act of June 30, 1890,

ch. 640, referred to in the text, are set forth *supra*, p. 109.

Sec. 3719. [*Guarantee of bid or certified check as security.*] Every proposal for naval supplies invited by the Secretary of the Navy, under the preceding section, shall be accompanied by a written guarantee, signed by one or more responsible persons, to the effect that he or they undertake that the bidder, if his bid is accepted, will, at such time as may be prescribed by the Secretary of the Navy, give bond, with good and sufficient sureties, to furnish the supplies proposed; and no proposal shall be considered, unless accompanied by such guarantee. If, after the acceptance of a proposal, and a notification thereof to the bidder, he fails to give such bond within the time prescribed by the Secretary of the Navy, the Secretary shall proceed to contract with some other person for furnishing the supplies; and shall forthwith cause the difference between the amount contained in the proposal so guaranteed and the amount for which he may have contracted for furnishing the supplies, for the whole period of the proposal, to be charged up against the bidder and his guarantor; and the same may be immediately recovered by the United States, for the use of the Navy Department, in an action of debt against either or all of such persons. *Provided*, That the Secretary of the Navy may, in his discretion, accept, in lieu of the written guaranty required to accompany a proposal for naval supplies, and in lieu of the bond required for the faithful performance of a contract for furnishing such supplies, a certified check, payable to the order of the Secretary of the Navy, for the full amount of such proposal or contract, the check to be held by the Secretary of the Navy until the requirements of the proposal or contract shall be complied with and as a guaranty for compliance with the same. [R. S.]

Act of Aug. 10, 1846, ch. 176, 9 Stat. L. 101.

This section was amended by the Act of May 25, 1896, ch. 239, 29 Stat. L. 136, by adding the final proviso reading, "*Provided*, That the Secretary of the Navy," etc.

The "preceding section" mentioned in the text is R. S. sec. 3718, *supra*, p. 108.

Discretion of secretary.—The time within which contracts for supplies shall be completed, depending as it does on the exigencies of the service, must necessarily be left to the discretion of the secretary of the navy. (1861) 10 Op. Atty.-Gen. 140.

Determination of time.—The time within which the contract is to be made is not fixed by law, but is to be prescribed by the secretary of the navy. If the secretary be satisfied that the offer, being the lowest, is, under all the circumstances, the most advantageous to the government, it is certainly within his power to accept it, even if it propose a longer time for entering into the contract. (1861) 10 Op. Atty.-Gen. 140.

Proposal to complete contract later than advertised time.—Where the secretary of the navy has advertised for proposals to furnish naval supplies, he may consider the proposal of the lowest bidder where the bid is in sub-

stantial compliance with the law, although it names a time for the completion of the contract five days beyond that fixed in the advertisement. (1861) 10 Op. Atty.-Gen. 140.

Withdrawal of bid.—Strictly construed this statute does not prevent a withdrawal of the bid before its acceptance, but liberally construed it may fairly be held that it binds the bidder to stand by his bid at least after the hour of opening. (1894) 21 Op. Atty.-Gen. 56.

Award after failure of lowest bidder.—Where the lowest bidder has failed to perform the requisite conditions after his bid is accepted, it is not necessarily the duty of the secretary of the navy to award the contract to the next lowest bidder. (1894) 21 Op. Atty.-Gen. 56.

Effect of extension.—The extension of the contract, so far as a forfeiture is concerned, is for the benefit of the contractor, to enable him to do that the omission of which has exposed him to sacrifice, and is nothing more than a conditional waiver, to which effect can be given only by the full compliance by the contractor with his renewed engagements within the period of the extension. (1843) 4 Op. Atty.-Gen. 283.

Failure to perform joint contract.—Where moneys are due to several joint contractors, the navy department cannot deduct from those moneys the amount of the forfeiture due to the United States under an unfulfilled contract between the government and one of the said contractors. (1864) 11 Op. Atty-Gen. 120.

Deduction on one contract for failure to perform another.—Where a contractor has entered into two contracts with the navy department and has fulfilled one of them, but failed to perform the other, the department in settling with the contractor may lawfully

deduct from the moneys due, on the first or executed contract, the amount of the forfeiture stipulated to be paid in the second contract in the event of a failure on the part of the contractor to perform it. (1864) 11 Op. Atty-Gen. 120.

The sureties to a contract made by an infant are clearly bound for his faithful performance of the contract; for, though the infant may excuse himself on the ground of his nonage the privilege is personal to himself and cannot be made available as a defense by them. (1844) 4 Op. Atty-Gen. 333.

Sec. 3720. [*Record of bid and report to Congress.*] All such proposals for naval supplies shall be preserved and recorded, and reported by the Secretary of the Navy to Congress at the commencement of every regular session. The report shall contain a schedule embracing the offers by classes, indicating such as have been accepted. In case of a failure to supply the articles or to perform the work by the person entering into such contract, he and his sureties shall be liable for the forfeiture specified in such contract, as liquidated damages, to be sued for in the name of the United States. [*R. S.*]

Act of March 3, 1843, ch. 83, 5 Stat. L. 617.

Sec. 3721. [*Purchases without advertisements.*] The provisions which require that supplies shall be purchased by the Secretary of the Navy from the lowest bidder, after advertisement, shall not apply to ordnance, gunpowder, or medicines, or the supplies which it may be necessary to purchase out of the United States for vessels on foreign stations, or bunting delivered for the use of the Navy, or tobacco, or butter or cheese destined for the use of the Navy, or things contraband of war. Contracts for butter and cheese for the use of the Navy may be made for periods longer than one year, if, in the opinion of the Secretary of the Navy, economy and the quality of the ration will be promoted thereby. The Secretary of the Navy may enter into contracts for tobacco, from time to time, as the service requires, for a period not exceeding four years; and in making such contracts he shall not be restricted to the lowest bidder, unless, in his opinion, economy and the best interests of the service will be thereby promoted. [*R. S.*]

Act of March 3, 1845, ch. 77, 5 Stat. L. 794; Act of March 3, 1847, ch. 48, 9 Stat. L. 172; Act of Aug. 3, 1848, ch. 121, 9 Stat. L. 272; Act of March 2, 1865, ch. 74, 13 Stat. L. 467.

The provisions of Act of Aug. 5, 1882, ch. 391, sec. 1, 22 Stat. L. 288, defining the words "ordnance" and "gunpowder," as used in this section, were expressly repealed by the Act of July 5, 1884, ch. 235, sec. 4, 23 Stat. L. 159.

Purchase of patent from naval officer.—The question of the right of the secretary of navy to contract with an officer of the navy for the purchase of patent rights and improvements in ordnance for use in the navy is determined under the provisions of this section, and not under the provisions of R. S. sec. 3718. (1892) 20 Op. Atty-Gen. 329.

"The secretary of the navy may lawfully contract with an ensign of the navy for the purchase of patent rights and improvements in 'B. L. R. ordnance' for use in the navy when the ensign was not employed to make

experiments, paid himself the expenses of obtaining letters patent, and when no expense was authorized or facility furnished by the bureau of ordnance to aid him in making or perfecting his invention." (1892) 20 Op. Atty-Gen. 329.

A contract with a gun company for the manufacture and delivery to the navy department of a number of guns, the manufacture of materials to be subject to the inspection and approval of the department, supplemented by an agreement providing for the manufacture of the guns at a particular place, and for keeping an account of the cost of labor involved, in order to arrive at the remuneration ultimately to be paid to said gun company, is a contract for supplies to the navy department, and not for services, and a contract with another company for the manufacture of any of said guns may be made by the navy department as a contract for ordnance without submitting the subject-matter thereof to competition by public advertisement. (1897) 21 Op. Atty-Gen. 577.

Joint resolution to allow the Secretary of the Navy to purchase plate iron and other material used in the construction of steamboilers for the United States Navy.

[Res. No. 30, of June 14, 1878, 20 Stat. L. 253.]

[*Materials for steam boilers for Navy.*] That on and after the passage of this act, the Secretary of the Navy be, and he is hereby authorized to purchase at the lowest market price, such plate iron and other material as may enter into the construction of steam boilers for the Navy without advertising for bids to furnish the same: *Provided*, That he shall cause to be sent to the principal dealers and manufacturers of iron and such other materials as may be required specifications of the quality description and character of such iron and materials so required: *And provided further*, That such plate iron and materials shall be subjected to the same tests and inspection as now provided for and which inspection and tests shall be made publicly and in presence of such bidders or their authorized agents as may choose to attend at the making thereof. [20 Stat. L. 253.]

[*Tobacco for the Navy.*] * * * And the Secretary of the Navy is hereby authorized and directed to cause advertisement to be made for tobacco for the use of the Navy, as the needs of the service may require, in the manner prescribed by law for other supplies. Bidders shall submit with their proposals a sample of the tobacco which they propose to furnish, and the contract shall, in the discretion of the Department, be awarded to the bidder whose sample is found by a board of officers to be best adapted for use in the Navy. * * * [29 Stat. L. 370.]

This is from the Naval Appropriation Act of June 10, 1896, ch. 399. It superseded the provisions of the Act of March 3, 1881, ch. 147, 21 Stat. L. 509, entitled "An act to regulate the mode of purchasing tobacco for the United States Navy," as follows:

"That the Secretary of the Navy be, and he is hereby, directed to cause all purchases of tobacco for the use of the Navy to be made in the city of Washington, and as follows: In the month of February or March of each year the Secretary of the Navy shall cause proposals for bids for supplying the Navy with tobacco during the next year to be ad-

vertised thirty days in one daily newspaper in each of the cities of New York, Harrisburg, Pennsylvania, Baltimore, Richmond, Raleigh, North Carolina, Saint Louis, Louisville, Nashville, Hartford, Connecticut, Detroit, Cairo, Illinois, and Chicago; said tobacco to be manufactured during the months of June, July, August, and September; the bids to be accompanied by samples of the tobacco which each bidder may propose to furnish. The lowest bid for furnishing tobacco equal to the United States Navy standard now in use shall be accepted." [21 Stat. L. 509.]

Sec. 3722. [*What bids may be rejected — opening bids.*] The chief of any Bureau of the Navy Department, in contracting for naval supplies, shall be at liberty to reject the offer of any person who, as principal or surety, has been a defaulter in any previous contract with the Navy Department. Parties who have made default as principals or sureties in any former contract shall not be received as sureties on other contracts; nor shall the copartners of any firm be received as sureties for such firm or for each other; nor, in contracts with the same Bureau, shall one contractor be received as surety for another. Every contract shall require the delivery of a specified quantity, and no bids having nominal or fictitious prices shall be considered. If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected; and no person shall be received as a contractor who is not a manufacturer of, or regular dealer in, the articles which he offers to supply. All persons offering bids shall have the right to be present when the bids are opened and inspect the same. [R. S.]

Res. No. 32, of March 3, 1863, 12 Stat. L. 828.

Sec. 3723. [*Contracts for foreign supplies for the Navy.*] No chief of a Bureau shall make any contract for supplies for the Navy, to be executed in a foreign country, except it be on first advertising for at least thirty days in two daily newspapers of the city of New York, inviting sealed bids for furnishing the supplies desired; which bids shall be opened in the presence of the Secretary of the Navy and the heads of two Bureaus; and contracts shall in all cases be awarded to the lowest bidder; and paymasters for the Navy on foreign stations shall render, when practicable, with their accounts, an official certificate from the resident consul, or commercial or consular agent of the United States, if there be one, to be furnished gratuitously, vouching that all purchases and expenditures made by the paymasters were made at the ruling market-prices of the place at the time of purchase or expenditure. [R. S.]

Act of March 3, 1871, ch. 117, 16 Stat. L. 535.

Sec. 3724. [*Rejection of excessive bids.*] Where articles are advertised and bid for in classes, and in the judgment of the Secretary of the Navy any one or more articles appear to be bid for at excessive or unreasonable prices, exceeding ten per centum above their fair market-value, he shall be authorized to reject such bid. [R. S.]

Act of July 4, 1864, ch. 252, 13 Stat. L. 394.

Sec. 3725. [*Hemp.*] All hemp, or preparations of hemp, used for naval purposes by the Government of the United States, shall be of American growth or manufacture, when the same can be obtained of as good quality and at as low a price as foreign hemp. [R. S.]

Act of July 14, 1862, ch. 163, 12 Stat. L. 554.

Sec. 3726. [*Preserved meats, etc.*] The Secretary of the Navy is authorized to procure the preserved meats, pickles, butter, and desiccated vegetables, in such manner and under such restrictions and guarantees as in his opinion will best insure the good quality of said articles. [R. S.]

Act of July 18, 1861, ch. 7, 12 Stat. L. 265.

Sec. 3727. [*Flour and bread.*] The Secretary of the Navy is authorized to purchase, in such manner as he shall deem most advantageous to the Government, the flour required for naval use; and to have the bread for the Navy baked from this flour by special contract under naval inspection. [R. S.]

Act of March 3, 1863, ch. 118, 12 Stat. L. 818.

Sec. 3728. [*Home manufactures to be preferred.*] The Secretary of the Navy, in making contracts and purchases of articles for naval purposes, shall give the preference, all other things, including price and quality, being equal, to articles of the growth, production, and manufacture of the United States. In purchasing fuel for the Navy, or for naval stations and yards, the Secretary of the Navy shall have power to discriminate and purchase, in such manner as he may deem proper, that kind of fuel which is best adapted to the purpose for which it is to be used. [R. S.]

Act of Sept. 28, 1850, ch. 80, 9 Stat. L. 513, 515.

Sec. 3729. [*Bunting.*] The Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury may enter into contract, in open market, for bunting of American manufacture, as their respective services require, for

a period not exceeding one year, and at a price not exceeding that at which an article of equal quality can be imported. [R. S.]

Act of March 2, 1865, ch. 74, 13 Stat. L. 467.

Sec. 3730. [*Relinquishment of reservations on deliveries.*] The Secretary of the Navy may relinquish and pay all reservations of the ten per centum upon deliveries made under contracts with the Navy Department, where these reservations have arisen and the contracts have been afterward extended, or where the contracts have been completed after the time of delivery, by and with the consent of the Department, or where the contracts have been dissolved by the like consent, or have been terminated, or an extension thereof has been prevented by operation of law, where no injury has been sustained by the public service. [R. S.]

Act of June 17, 1844, ch. 107, 5 Stat. L. 703.

Payment of reserved percentage.—It is not competent for the department to pay to the contractors upon forfeited contracts the ten

per cent. reserved as collateral security, whether the same has been reserved on original or renewed contracts. (1843) 4 Op. Atty.-Gen. 283.

Sec. 3731. [*Name of contractor to appear on supplies.*] Every person who shall furnish supplies of any kind to the Army or Navy shall be required to mark and distinguish the same with the name of the contractor furnishing such supplies, in such manner as the Secretary of War and the Secretary of the Navy may, respectively, direct; and no supplies of any kind shall be received, unless so marked and distinguished. [R. S.]

Act of July 17, 1862, ch. 209, 12 Stat. L. 596.

SEC. 9. [*Bidders for supplies, etc., for Indian service — certified checks to accompany bids.*] That hereafter all bidders under any advertisement published by the Commissioner of Indian Affairs for proposals for goods, supplies, transportation, and so forth, for and on account of the Indian service, whenever the value of the goods, supplies, and so forth, to be furnished, or the transportation to be performed, shall exceed the sum of five thousand dollars, shall accompany their bids with a certified check, or draft payable to the order of the Commissioner of Indian Affairs, upon some United States depository or some one of such solvent national banks as the Secretary of the Interior may designate, which check or draft shall be five per centum on the amount of the goods, supplies, transportation, and so forth, as aforesaid; and in case any such bidder, on being awarded a contract, shall fail to execute the same with good and sufficient sureties according to the terms on which such bid was made and accepted, such bidder shall forfeit the amount so deposited to the United States, and the same shall forthwith be paid into the Treasury of the United States; but if such contract shall be duly executed, as aforesaid, such draft or check so deposited shall be returned to the bidder. [18 Stat. L. 450.]

This is from the Indian Department Appropriation Act of March 3, 1875, ch. 132. A provision similar to the above, except in the use of the words "or solvent national bank" in place of the words "or some one

of such solvent national banks as the secretary of the interior may designate," as used here, was contained in the Act of June 22, 1874, ch. 389, sec. 6, 18 Stat. L. 176.

[*Transportation of Indian supplies.*] * * * That hereafter contracts involving an expenditure of more than two thousand dollars shall be advertised and let to the lowest responsible bidder. * * * [19 Stat. L. 291.]

This is from the Indian Department Appropriation Act of March 3, 1877, ch. 101, under the appropriation for "transportation." The clause immediately preceding the above is as follows: "And whenever practicable wagon transportation may be performed by Indian labor; and whenever it is so performed the Commissioner of Indian Affairs is hereby au-

thorized to hire a storehouse at any railroad whenever necessary, and to employ a storekeeper therefor, and to furnish in advance the Indians who will do the transportation with wagons and harness, all the expenses incurred under this provision, to be paid out of this appropriation: *Provided,*"

[SEC. 1.] [*Transportation of Indian supplies.*] * * * That from and after the passage of this Act, Indian goods and supplies shall be transported under contract as provided in the Act of March third, eighteen hundred and seventy-seven, or in open market by common carriers, as the Secretary of the Interior in his discretion shall determine. [30 Stat. L. 676.]

This is from the Deficiencies Appropriation Act of July 7, 1898, ch. 571. The provision referred to in the text is set out in the preceding section.

Sec. 4667. [*Contracts for erection of light-houses must be upon advertisement for proposals.*] No contract for the erection of any light-house shall be made except after public advertisement for proposals in such form and manner as to secure general notice thereof, and the same shall only be made with the lowest bidder therefor, upon security deemed sufficient in the judgment of the Secretary of the Treasury. [R. S.]

Act of March 2, 1867, ch. 149, 14 Stat. L. 425.

[*Heating apparatus for public buildings.*] * * * That contracts shall be made by the Secretary of the Treasury for furnishing and putting in heating apparatus for public buildings, upon advertisements in some leading newspaper in the State where each building is situated, containing specifications of the kind of heating apparatus required, and such contracts shall be made with the lowest responsible bidder therefor. * * * [24 Stat. L. 512.]

This is from the Sundry Civil Appropriation Act of March 3, 1887, ch. 362.

[*Transportation of moneys, bullion, securities, etc.*] * * * Hereafter whenever it is practicable contracts for the transportation of moneys, bullion, coin, notes, bonds, and other securities of the United States, and paper shall be let to the lowest responsible bidder therefor, after notice to all parties having means of transportation. * * * [23 Stat. L. 204.]

This is from the Sundry Civil Appropriation Act of July 7, 1884, ch. 332.

SEC. 25. [*Cartage of merchandise in custody of Government.*] That public cartage of merchandise in the custody of the Government shall be let after not

less than thirty days' notice of such letting to the lowest responsible bidder giving sufficient security, and shall be subject to regulations approved by the Secretary of the Treasury. [18 Stat. L. 191.]

This is from the Act of June 22, 1874, ch. 391, entitled "An Act to amend the customs-revenue laws and to repeal moietyes."

Government cartage only.—This Act applies only to such cartage as is paid for by the government and not to cartage the expense of which is paid by the individual importer. (1891) 20 Op. Atty.-Gen. 35.

Baggage for barge office.—It is within the power of the secretary of the treasury to make a contract for the transportation of the baggage of passengers from foreign ports from the landing to the barge office for examination by the customs officers. *Starin v. U. S.*, (1896) 31 Ct. Cl. 65.

Sec. 3732. [Unauthorized contracts prohibited.] No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year. [R. S.]

Act of March 2, 1861, ch. 84, 12 Stat. L. 220.

No expenditures beyond appropriations.—See R. S. sec. 3679, in *ESTIMATES, APPROPRIATIONS, AND REPORTS*, vol. 2, p. 898.

Authority to contract necessary.—In order that a contract should be authorized by law, it must appear either that express authority was given to make such contract or that it was necessarily to be inferred from some duty imposed upon or from some authority given to the person assuming to contract on behalf of the United States. (1877) 15 Op. Atty.-Gen. 235.

When contracts are authorized.—The first clause of this section applies to direct authority to contract granted by statute; the second clause covers an implied authority arising out of the appropriation of means to fulfil. The two clauses are to be construed together. If public moneys are involved, an appropriation may give power to contract. If public moneys are not involved, the department is prohibited from making the contract "unless the same is authorized by law." (1890) 19 Op. Atty.-Gen. 650.

"Two classes of contracts are authorized by this section: one where the contract is authorized and an appropriation sufficient for its fulfilment is provided for; the other where no appropriation sufficient to the completion of the contract is made." (1877) 15 Op. Atty.-Gen. 235.

Authority of executive officers to contract.—"The executive officers of the government have no power to bind it by contract, unless there be statutes expressly or by clear implication authorizing them to do so." *Chase v. U. S.*, (1890) 44 Fed. Rep. 732.

Application to other acts.—The exception contained in this section in favor of contracts or purchases in the war and navy departments for clothing, subsistence, forage, fuel, etc., withdraws such contracts or purchases from the operation of the prohibition in R. S. sec. 3679. (1876) 15 Op. Atty.-Gen. 124; (1877) 15 Op. Atty.-Gen. 209; *Floyd Acceptances*, (1868) 7 Wall. (U. S.) 684.

Effect of special provisions.—The prohi-

bition of this section and that of R. S. sec. 3679 apply to the public service in general and must yield to special provisions relating to a particular department. *New York Cent., etc., R. Co. v. U. S.* (1886) 21 Ct. Cl. 468.

Affirmative right to contract for clothing, etc.—Although exceptional and negative in its form this provision in regard to contracts for clothing, etc., is to be deemed affirmative in its character. *Floyd Acceptances*, (1868) 7 Wall. (U. S.) 684; (1877) 15 Op. Atty.-Gen. 209.

Contract wholly dependent upon appropriation.—Where the authority to enter into a contract for a particular work in behalf of the United States depends wholly upon the appropriation made for that purpose, no officer of the government has power to create a liability therefor beyond the amount appropriated and the contractor cannot recover more than the amount appropriated, whatever may be the extent of the work. *Shipman v. U. S.*, (1883) 18 Ct. Cl. 138.

Contract not exceeding amount of exhausted appropriation.—If a contract dependent upon an appropriation for its validity does not exceed the appropriation, it will be deemed valid although the appropriation be exhausted. *New York Cent., etc., R. Co. v. U. S.*, (1886) 21 Ct. Cl. 468.

Authority under annual appropriations.—"The annual appropriations which are made by Congress to defray the expenses of the executive departments do not authorize heads of those departments to bind the government by contract beyond the time for which such appropriations are made applicable." *Chase v. U. S.*, (1890) 44 Fed. Rep. 732.

Contract limited by appropriation.—Where by Act of Congress the secretary of war was authorized and directed to contract with a company for the purchase of a certain article without advertising, and in the same Act a specific sum of money was appropriated for the purpose of procuring such articles and no express or implied authority was given by the Act to bind the government beyond the amount appropriated, the secretary of war, by making the contract for the full

amount appropriated, exhausted his authority and could not make a supplemental contract binding the government for further expenditures. (1897) 21 Op. Atty-Gen. 495.

Contract conditional upon future appropriation.—A contract for postal car facilities which makes the liability of the government conditional upon future appropriation is valid and becomes operative if the appropriation be subsequently made. *New York Cent., etc., R. Co. v. U. S.*, (1886) 21 Ct. Cl. 468.

Work authorized according to specific plans.—When Congress authorizes a work to be done according to specific plans, it is a law authorizing a contract within the meaning of this section, even though the contract slightly exceeds the appropriation made for that purpose. *Fowler's Case*, (1867) 3 Ct. Cl. 43.

Cost of authorized work not limited.—If an officer is clothed with authority to do a piece of work without any limitation of cost the contracts made by him therefor are binding on the government whether an appropriation is made for that purpose or not. *Shipman v. U. S.*, (1883) 18 Ct. Cl. 138.

Authority to finish structure by appropriation of certain amount.—“When all that is done is the appropriation of a certain sum to be expended on a certain structure, the plan of which has been determined on, the authority to contract for the completion of the whole structure cannot be inferred. The contract is good to the extent of the appropriation made and just so far as such appropriation is adequate to its fulfillment. So far as it undertakes to do more than this, it is invalid. Nor can such a contract be binding so as to affix itself to future appropriations even if it is subject to the contingency that such appropriations shall be made.” (1877) 15 Op. Atty-Gen. 235.

Supplies for navy and war departments.—Contracts and purchases in the war and navy departments for clothing, subsistence, etc., may be made, though there is no appropriation adequate to the fulfillment of the contract or purchase, provided such contracts and purchases do not exceed the necessities of the current year. (1876) 15 Op. Atty-Gen. 124.

Transportation and subsistence at Ellis Island.—The secretary of the treasury is authorized to procure transportation facilities to and from Ellis Island, and to provide for the subsistence of emigrants and others upon the island, and in any manner not prohibited by law that he shall deem best. This section and R. S. sec. 3679 do not interfere with this freedom of action, because no appropriation will be required to be made by Congress on account of either of such contracts. (1891) 20 Op. Atty-Gen. 217.

Contracts for information.—The secretary of the navy is, impliedly, authorized to contract for compensating persons furnishing information of frauds practiced upon the government in the supplying of equipment which was not according to contract. (1893) 21 Op. Atty-Gen. 1.

Purchase of patent under appropriation for material and labor.—The secretary of the navy cannot legally contract with the pat-

entee for the purchase of his patent or for a license to use it under an appropriation limited to the purchase of material and the employment of labor in the manufacture of such article out of it. (1889) 19 Op. Atty-Gen. 407.

Use of telegraph in postal service.—The post-office department has no power, under existing laws, to make contracts for the transmission of intelligence by telegraph, for the general public, as a part or branch of the postal service. (1890) 19 Op. Atty-Gen. 650.

Architect's claim for plans.—Where Congress has asserted that an academy under its control should be placed in a certain city, and has made an appropriation for that purpose, an architect's claim for services ordered by the navy department in furnishing plans for a new building for that academy in the designated city is not barred by the provisions of this section, that the contract must be authorized by law or under an appropriation adequate to its fulfillment. *Mason's Case*, (1868) 4 Ct. Cl. 495.

The commissioner-general of the Paris exposition has no authority to let a contract for the printing and publication of a catalogue of the United States exhibit, etc., in which the contractor is to receive no money from the United States, but is to derive his compensation therefor from the proceeds of the sale of the catalogue and the insertion of advertisements therein. (1899) 22 Op. Atty-Gen. 388.

Lease for years.—Provisions of this section clearly limit the liability of the government by the appropriation made for each fiscal year, and a lease of a building is included thereunder, and, although for a term of years, is binding on the government only until the end of the fiscal year in which it is made, with a future option from year to year until the end of the term. *Smoot v. U. S.*, (1903) 38 Ct. Cl. 427.

Lease or purchase of post-office building.—“The general authority ‘to establish post offices,’ does not itself, or without more, necessarily imply authority to bind the United States by a contract to lease or purchase a post-office building, although an appropriation of money to pay for the rent of a post-office building at a named place, might give authority to the postmaster-general to lease such building in that locality as he deemed proper for the service, always keeping within the amount so appropriated.” *Chase v. U. S.*, (1894) 155 U. S. 489.

Authority of postmaster-general to lease or purchase.—“While the postmaster-general, under the power to establish post offices, may designate the places—that is, the localities—at which the mails are to be received, he cannot bind the United States by any lease or purchase of a building to be used for the purposes of a post office, unless the power to do so is derived from a statute which either expressly or by necessary implication authorizes him to make such lease or purchase.” *Chase v. U. S.*, (1894) 155 U. S. 489.

Lease for term beyond appropriation.—Under this section the postmaster-general

"And he may require any bid to be accompanied by a bond in such penal sum as he may deem advisable, with good and sufficient security, conditioned that the bidder will enter into a contract agreeably to the terms of his bid, if the same be awarded to him within sixty days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within the said period of sixty days."

Amending other acts.—In *Churchyard v. U. S.*, (1900) 100 Fed. Rep. 920, this Act was cited as an amendment to R. S. secs. 3714, 3744.

Formal defects.—In specific cases the

secretary of war is authorized to waive formal defects in bids and bonds in order to secure the public advantage resulting from competitive bidding. (1897) 21 Op. Atty.-Gen. 469.

Insertion of dates.—A bond accompanying a bid to build certain public works, duly signed, sealed, and delivered, the separate proposals constituting the bid and the bond being on printed blanks bound together and consecutively paged in print, is not sufficiently defective as to be regarded as invalid because the dates of the bid and bond are not inserted in the blanks left for that purpose in printing the instrument. (1897) 21 Op. Atty.-Gen. 469.

SEC. 2. [*Secretary of War to give preference to domestic materials and labor.*] That in all contracts for material for any public improvement, the Secretary of War shall give preference to American material; and all labor thereon shall be performed within the jurisdiction of the United States. [18 Stat. L. 455.]

This is from the Army Appropriation Act of March 3, 1875, ch. 133.

Sec. 3718. [*Naval supplies to be furnished by contract.*] All provisions, clothing, hemp, and other materials of every name and nature, for the use of the Navy, and the transportation thereof, when time will permit, shall be furnished by contract, by the lowest bidder, as follows: In the case of provisions, clothing, hemp, and other materials, the Secretary of the Navy shall advertise, twice a week for two weeks or longer, not to exceed four weeks, or once a week for two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy, in one or more of the principal papers published in the place where such articles are to be furnished, for sealed proposals for furnishing the same, or the whole of any particular class thereof, specifying the classes of materials and referring bidders to the several chiefs of Bureaus, who will furnish them with printed schedules, giving a full description of each and every article, with dates of delivery, and so forth. In the case of transportation of such articles, he shall advertise for a period of not less than five days. All such proposals shall be kept sealed until the day specified in such advertisement for opening the same, when they shall be opened by or under the direction of the officer making such advertisement, in the presence of at least two persons. The person offering to furnish any class of such articles, and giving satisfactory security for the performance thereof, under a forfeiture not exceeding twice the contract price in case of failure, shall receive a contract for furnishing the same. [R. S.]

Act of March 3, 1843, ch. 83. 5 Stat. L. 617; Act of Sept. 28, 1850, ch. 80. 9 Stat. L. 513; Act of Aug. 5, 1854, ch. 268, 10 Stat. L. 585; Act of April 17, 1868, ch. 45, 14 Stat. L. 38.

This section was amended to read as above by the Act of March 3, 1893, ch. 212, 27 Stat. L. 724. It was first amended by the Act of June 30, 1890, ch. 640, 26 Stat. L. 197, by striking out the words "once a week, for at least four weeks," originally appearing therein, and inserting in lieu thereof the words "twice a week for two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy."

It was again amended by the Act of July 19, 1892, ch. 206, 27 Stat. L. 243, so as to read "twice a week for two weeks or longer, not to exceed four weeks, or once a week for four weeks, in the discretion of the Secretary of the Navy."

It was again amended by the Act of March 3, 1893, ch. 212, 27 Stat. L. 724, so as to read "twice a week for two weeks or longer, not to exceed four weeks, or once a week for two weeks or longer, not to exceed four weeks, in the discretion of the Secretary of the Navy," as given in the text.

Substantial compliance sufficient.—The controlling purpose of these provisions and

R. S. sec. 3719 plainly is to secure the contract to the lowest bidder who will honestly perform it. The directions of the statutes as to the manner of advertising for and receiving proposals, and as to the form of the proposals themselves, are intended to accomplish this purpose, and a failure by the lowest bidder to comply with them ought not to exclude his proposal from consideration, unless it be such an omission as will deprive the government of the requisite security against loss by violation or nonperformance of the contract. If the proposal exhibit a substantial compliance with the provision of the law as to its form, and if it be the lowest bid, its rejection for an immaterial informality would be in disregard of the meaning of Congress. (1861) 10 Op. Atty-Gen. 140.

Purpose of articles included.—As provisions, clothing, and hemp, for the use of the navy, were specifically mentioned, Congress was merely providing for the current and necessary expenses of that branch of the service. The general phraseology, "and other materials of every name and nature," was designed to include the other articles demanded for the same purpose. (1849) 5 Op. Atty-Gen. 89.

Award to the lowest bidder.—The secretary of the navy is obliged to give contracts for supplies to the lowest bidder who fills the requirements as to security, etc., but he is the person charged with the duty of ascertaining the facts in this regard, and his decision is not reviewable in any court. (1894) 21 Op. Atty-Gen. 56.

Modification of terms of contract.—The

navy department has not the right in awarding the contract to the lowest bidder to modify its terms in regard to the time of delivery, or any other of its material elements. (1844) 4 Op. Atty-Gen. 334.

Contract with patentee.— "If the article needed be one for which the secretary of the navy may negotiate without advertising for proposals, it would seem that the secretary may contract with a patentee of the article to furnish the needed supply." (1889) 19 Op. Atty-Gen. 407.

Patentee lowest bidder.—If the patentee of an article is the lowest bidder for furnishing that article the secretary of the navy may accept his proposal and make a contract with him. (1889) 19 Op. Atty-Gen. 407.

Contracts entered into by infants with the officers of the government are valid and obligatory, notwithstanding such infancy, unless the infants themselves take measures to avoid them. (1844) 4 Op. Atty-Gen. 333.

Contracts for hemp.—The secretary of the navy in contracting for water-rotted hemp, for the use of the navy, is restricted in the manner of purchase by this Act, which requires him to advertise for the article, to receive bids, and to award the contract for it to the lowest bidder. (1846) 4 Op. Atty-Gen. 475.

Renewal of contract.—In (1843) 4 Op. Atty-Gen. 283, it was held that since the Act of March 3, 1843, the secretary of the navy is not competent to renew a contract which has expired without advertising as is required by the first section of that Act.

[*Gun steel and armor for Navy.*] * * * That no contract for the purchase of gun steel or armor for the Navy shall hereafter be made until the subject-matter of the same shall have been submitted to public competition by the Department by advertisement. [27 Stat. L. 732.]

This is from the Naval Appropriation Act of March 3, 1893, ch. 212. The provision is repeated from the appropriation acts of

March 2, 1891, ch. 494, 26 Stat. L. 815, and July 19, 1892, ch. 206, 27 Stat. L. 251.

[*Classification, etc., and issue of naval supplies.*] * * * For expenses of arranging, classifying, consolidating, and cataloguing supplies for the Navy, herein provided for and now on hand, ten thousand dollars; and all supplies purchased with moneys appropriated by this act shall be deemed to be purchased for the Navy and not for any bureau thereof, and these supplies, together with all supplies now on hand, shall be arranged, classified, consolidated, and catalogued, and issued for consumption or use, under such regulations as the Secretary may prescribe, without regard to the bureau for which they were purchased. [26 Stat. L. 205.]

This is from the Naval Appropriation Act of June 30, 1890, ch. 640.

[*Naval supplies, how purchased and issued.*] * * * All supplies hereafter purchased with moneys appropriated for any branch of the naval estab-

5503, R. S., from continuing the employment of the contractors. If further appropriations are made, there must be a new contract for their expenditure. (1895) 21 Op. Atty.-Gen. 244; (1857) 9 Op. Atty.-Gen. 18.

Notice of restricted cost.—A contractor doing all the work under a statute author-

izing the construction of the building but limiting the cost to a fixed amount is chargeable with notice of the restriction and cannot set up a breach of contract, which will in effect do away with the restriction. *Trenton Co.'s Case*, (1876) 12 Ct. Cl. 147.

Sec. 5503. [*Officer of the Government contracting beyond specific appropriation — penalty.*] Every officer of the Government who knowingly contracts for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be punished by imprisonment not less than six months nor more than two years, and shall pay a fine of two thousand dollars. [R. S.]

Act of July 25, 1868, ch. 233, 15 Stat. L. 177.

[SEC. 1.] [*Restrictions on contracts for sites for public buildings.*] * * * And hereafter no money shall be paid nor contract made for payment for any site for a public building in excess of the amount specifically appropriated therefor. * * * [18 Stat. L. 395.]

This is from the Sundry Civil Appropriation Act of March 3, 1875, ch. 130.

[*Contracts for rent in District of Columbia.*] * * * Hereafter no contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building. [19 Stat. L. 370.]

This is from the Deficiencies Appropriation Act of March 3, 1877, ch. 106. A substantially similar provision was contained in the Act of June 22, 1874, ch. 388, 18 Stat. L. 144.

"For exceptions as to Washington city post office and branches, see 1888, March 26, ch. 43 (25 Stat. L. 46), and 1890, June 30, ch. 641 (26 Stat. L. 207), both omitted from this volume as of local application only." *Compilers' note*, 1 Supp. R. S. 137.

Intent of Act.—The legislative power has most strongly indicated its intention that no building should be rented, not actually in use by the government, until an appropriation therefor shall have been made in terms. (1877) 15 Op. Atty.-Gen. 275.

Express contracts.—These provisions undoubtedly apply to express contracts, and prohibit the making of such contracts except as therein provided. *Semmes v. U. S.*, (1891) 26 Ct. Cl. 119.

Implied contracts by authorized officers.—This Act has no application to that class of implied contracts which arise from the acts of public officers in the performance of their duties in carrying on the business of the government intrusted to them by law in their respective spheres. *Rives v. U. S.*, (1893) 28 Ct. Cl. 249, following *Semmes v. U. S.*, (1891) 26 Ct. Cl. 119.

Appropriation not in terms for rent.—The appropriation made under chapter 235 of the Act of June 16, 1880, "for the expense of the geological survey," etc., not being "in terms" for the rent of a building or part thereof in the District of Columbia, to be used by such geological survey, and no provision having been made elsewhere therefor, a lease of a building for an office of such survey is void as forbidden by this Act. (1881) 17 Op. Atty.-Gen. 87.

Rent of post offices.—The postmaster-general being authorized by law to establish post offices may procure buildings for them, and while he cannot bind the government by an express contract, his action will render it liable to the owner for just compensation. *Semmes v. U. S.*, (1891) 26 Ct. Cl. 119; *Rives v. U. S.*, (1893) 28 Ct. Cl. 249.

Building rented by officer in charge of construction.—The renting of a building intended to be used as an office by an officer to whom has been assigned the duty of taking charge of the construction of the state, war, and navy department building, etc., violates this Act prohibiting the renting of any building or part thereof for governmental purposes in the District of Columbia, "until an appropriation therefor shall have been made in terms by Congress." (1877) 15 Op. Atty.-Gen. 274.

Sec. 3734. [*Restrictions on commencement of new buildings.* See PUBLIC PROPERTY, BUILDINGS, AND GROUNDS.]

Sec. 3735. [*Contracts limited to one year.*] It shall not be lawful for any of the Executive Departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made. [R. S.]

Act of Jan. 31, 1868, Res. 8, 15 Stat. L. 246.
See the following sections.

Locks and seals for transportation in bond.
—It is unlawful for the head of an executive department to make a contract for locks and seals used to secure packages while being transported in bond, for a longer term than one year from the time the contract was made. (1896) 21 Op. Atty.-Gen. 304.

Ferry service and subsistence at Ellis Island.—The inhibition contained in this section is inapplicable to contracts made by the secretary of the treasury for ferry service to and from Ellis Island, and for furnishing of subsistence to emigrants and others upon said island. (1891) 20 Op. Atty.-Gen. 217.

Joint resolution explanatory of resolution approved January 31, 1868, entitled "A resolution limiting contracts for stationery and other supplies in the executive departments to one year."

[Res. No. 6, of March 24, 1874, 18 Stat. L. 286.]

[*Contracts for mail bags, locks, postal cards, etc., excepted.*] That the resolution approved January thirty-first, eighteen hundred and sixty-eight, entitled "A resolution limiting contracts for stationery and other supplies in the Executive Departments to one year," shall not be held, or construed, to apply to, or include mail-bags, mail locks and keys, postal cards, postage stamps, newspaper wrappers, or stamped envelopes. [18 Stat. L. 286.]

The resolution here referred to is incorporated into Revised Statutes as section 3735.
For other contracts in postal service, see POSTAL SERVICE, vol. 5, p. 780.

[SEC. 1.] [*Supplies for free delivery service.*] * * * That the Postmaster General may, when if [*sic*] in his judgment the good of the service so requires make contract for necessary supplies for the free-delivery service for a period not exceeding four years. * * * [25 Stat. L. 844.]

This is from the Postal Service Appropriation Act of March 2, 1889, ch. 374.

[SEC. 1.] [*Post-route maps.*] * * * And the Postmaster-General may, in his discretion, cause the contract for printing post-route maps to be let for a term of four years; * * * [28 Stat. L. 803.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 2, 1896, ch. 177.

[SEC. 1.] [*Postal Guide.*] * * * And the Postmaster-General may, in his discretion, cause the contract for furnishing the Official Postal Guide to be let for a term of four years. * * * [29 Stat. L. 176.]

This is from the Legislative, Executive, and Judicial Appropriation Act of May 28, 1896, ch. 252.

Necessity of advertisement.—A contract for furnishing the post-office department with

copies of the Postal Guide, under an appropriation for "publication of copies" thereof, does not come within the provision of R. S. sec. 3709, and the postmaster-general is not required to advertise for proposals previously

to make such a contract. (1881) 17 Op. Atty.-Gen. 84.

The design of R. S. sec. 3709, in requiring advertisements for proposals before making purchases and contracts for supplies, is to invite competition among bidders, and it contemplates only those purchases and contracts where competition as to the article needed is

possible. The Official Postal Guide being a copyrighted publication, edited, printed, and owned by a particular firm, it is manifestly not an article for the furnishing of which there could be any competition between that firm and other persons. (1881) 17 Op. Atty.-Gen. 84.

[SEC. 1.] [*Supplies for post-office department.*] * * * And hereafter the Postmaster-General is authorized to contract for a term not exceeding four years, for the supply of any or all articles enumerated under the head of "Supply Division," when, in his judgment, it shall appear to be for the best interests of the service. * * * [32 Stat. L. 114.]

This is from the Postal Service Appropriation Act of April 21, 1902, ch. 563, under the appropriation for "supply division."

Sec. 3736. [*Restriction on purchases of land.*] No land shall be purchased on account of the United States, except under a law authorizing such purchase. [R. S.]

Act of May 1, 1820, ch. 52, 3 Stat. L. 568.

Necessity of express power.—The general effect of the Act is to render the exercise by an executive department of a power to purchase land on account of the United States, illegal unless the intention of Congress that such a power should be exercised has been so clearly expressed in the law which is invoked as containing the authority, that the power may be said to be an express one under the words of the law. (1865) 11 Op. Atty.-Gen. 201.

Cession from state or purchase from individual necessary.—This section negatives any idea that Congress claims power to take to the government of the United States dry lands, or soil covered by water, for the purpose of commerce or navigation, or naval or military purposes, or for the construction of any kind of public buildings or public improvements without a cession from the state, or a purchase from an individual who may have title to the property desired for the site of the public works intended by the United States. (1853) 6 Op. Atty.-Gen. 172.

Land received in payment of debt.—The United States having the power to make a contract as incident to its sovereignty may compromise a suit and receive real and other property in discharge of the debt in trust and sell the same, and such procedure does not come under any authority to purchase lands. *U. S. v. Lane*, (1844) 3 McLean (U. S.) 365, 26 Fed. Cas. No. 15,559.

Land taken as security for debt.—This Act does not prevent the acquisition of the legal title to land by the United States, when taken as security for a debt by the proper officer, though not specially required or authorized by any particular Act of Congress. *Neilson v. Lagow*, (1851) 12 How. (U. S.) 98.

Mortgages of real estate to secure debts.—The United States have the capacity within

the sphere of their constitutional powers, and through the instrumentality of the proper department, to take mortgages of real estate to secure the payment of debts due to them, notwithstanding Congress has enacted that "no land shall be purchased on account of the United States except under a law authorizing such purchase." *Van Brocklin v. Tennessee*, (1886) 117 U. S. 151.

Purchase of land under appropriation for defenses.—An Act of Congress appropriating a sum of money for permanent defenses at a certain place will not authorize the purchase on account of the United States of a tract of land as a site for a proposed fort at the place mentioned in the statute. (1865) 11 Op. Atty.-Gen. 201.

Under appropriation for armory improvements.—An appropriation for repairs, improvements, and new machinery at an armory, cannot, nor can any portion of it, be applied to the purchase of the lands described in the estimate made at the ordnance office, although a portion of the appropriation was asked for with a view to the purchase of lands, if Congress saw fit to specify the purposes for which it granted it, among which the purchase of lands is not included. (1846) 4 Op. Atty.-Gen. 533.

Under appropriation for wharves.—When Congress has made an appropriation, and one of the objects for which the appropriation is to be used, specially designated in the Act, is the construction of wharves, it necessarily follows that the right to purchase land upon which to build such wharves is implied. (1899) 22 Op. Atty.-Gen. 665.

Under appropriation for erection of monuments.—An appropriation for the erection of monuments or memorial tablets is not applicable to the purchase of land for the sites of such monuments or tablets. (1887) 19 Op. Atty.-Gen. 79.

Sec. 3737. [*No transfer of contract.*] No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States. [R. S.]

Act of July 17, 1862, ch. 200, 12 Stat. L. 596.

Purpose of section.—Sections 3477, 3737, "were passed for the protection of the government. They were passed in order that the government might not be harassed by multiplying the number of persons with whom it had to deal and might always know with whom it was dealing until the contract was completed and a settlement made. Their purpose was not to dictate to the contractor what he should do with the money received on his contract after the contract had been performed." *Hobbs v. McLean*, (1886) 117 U. S. 567.

Personal service of contractor.—The obvious reason for this enactment was to secure to the United States the personal attention and services of the contractor, and to render him liable to punishment for fraud or neglect of duty. *Francis's Case*, (1875) 11 Ct. Cl. 638.

Prevention of bids by agents.—One of the purposes of the law was to secure integrity in bidding for contracts, by preventing a bidder or contractor from making several bids, one by himself and others by his friends and employees, to be afterwards consummated by assignments of the contract by them to the real bidder for whom they all acted. (1888) 19 Op. Atty-Gen. 186.

Bids for speculation.—Another purpose was to prevent those who bid for and obtain contracts for mere speculation, and who have neither the intent nor ability to perform them, from selling the contracts at a profit to *bona fide* bidders or contractors. (1888) 19 Op. Atty-Gen. 186.

This statute was passed to secure government contracts to *bona fide* contractors who intend to perform the duties as well as to assume the liabilities thereof, and to prevent parties from acquiring mere speculative interests. *Francis's Case*, (1875) 11 Ct. Cl. 638.

Capacity to fulfil contract.—Contracts are to be performed by those who make them, and are not to be the subjects of traffic or transfer. It is, therefore, necessary that they should be made with those who from their capacity are competent to render the service to be performed or from their business are able to furnish from its resources that which they contract to supply. (1877) 15 Op. Atty-Gen. 226.

Effect of transfer.—The transfer of a contract is not by this section declared null and void. *Dulaney v. Scudder*, (C. C. A. 1899) 94 Fed. Rep. 6.

Right to recognize assignment.—Under this section the government is free to treat a transferred contract as annulled or to recognize the assignment. *Dulaney v. Scudder*, (C. C. A. 1899) 94 Fed. Rep. 6.

Privilege of annulment merely.—The statute is intended only for the benefit of the United States; and while it is said that such transfer shall cause the annulment of the contract or order transferred, it is intended only that it shall do so in case the United States declines to recognize such transfer. While, therefore, the United States may avail itself of such transfer to annul the contract, it is not compelled to do so. (1879) 16 Op. Atty-Gen. 277; (1877) 15 Op. Atty-Gen. 235.

But in (1863) 10 Op. Atty-Gen. 523, it was said that a contract transferred by the parties in violation of this section is absolutely annulled so far as the United States are concerned.

Transfer of any nature included.—It is sufficient to annul a contract if the facts disclose a substantial transfer of an interest therein by whatever means attempted or however much disguised. *Francis's Case*, (1875) 11 Ct. Cl. 638.

What constitutes assignment of an interest.—Where a contractor with the government enters into an agreement with a third party, by which it is stipulated that a part of the money, material, or labor necessary for the execution of the contract shall be furnished by the third party, and that the profits or the loss resulting from the contract shall be borne or shared in by the contractor and the third party in proportion to the amounts contributed by each, such agreement is an assignment of an interest in the contract within the meaning of the provisions of this section. (1879) 16 Op. Atty-Gen. 277.

Approval of assignment by officer.—There is no authority given by the statute, nor to be inferred from it, that any officer of the United States can, in advance, either approve or recognize any proposed assignment thus forbidden. (1888) 19 Op. Atty-Gen. 186.

Articles of partnership which do not transfer a contract with the United States, or any interest therein, are not forbidden by this section. *Hobbs v. McLean*, (1886) 117 U. S. 567.

The fact that a partnership is entered into by contractors having United States contracts does not necessarily violate this section. *North Pacific Lumber Co. v. Spore*, (Oregon 1904) 75 Pac. Rep. 890, following *Hobbs v. McLean*, (1886) 117 U. S. 567.

Partnership prior to contract.—A partnership which may be fairly construed to be the personal contract of one by which, in consideration of money to be advanced, and services to be performed by his partners, he agreed to divide with them a fund which he expected to receive from the United States on a contract which he had not yet entered into, does not constitute a transfer of the contract such as would be a violation of this

statute. *Hobbs v. McLean*, (1886) 117 U. S. 567.

An agreement amounting to a partnership arrangement entered into before the execution of contracts with the government, made in good faith and not for the purpose of influencing bidding or in any way otherwise to prejudice the United States, is not a transfer of a contract such as will annul the contract under the provisions of this section. *Field's Case*, (1880) 16 Ct. Cl. 434.

Preliminary arrangements to secure capital.—The provisions of this section do not apply to a preliminary arrangement for the honest purpose of uniting capital to obtain the necessary means to fulfil a public contract, there being no intent to influence bidding or to evade the duties and responsibilities of a public contractor. *Field's Case*, (1880) 16 Ct. Cl. 434.

Funds furnished by surety.—A contract with the government is not annulled by the fact that the contractor makes an agreement with one of the sureties on his bond to the government by which the surety furnishes the moneys necessary for the completion of the work under the contract and receives a part of the profits to be derived from it. *Bowe v. U. S.*, (1890) 42 Fed. Rep. 761.

Power of attorney.—Where one having a contract awarded him by the state department gives a power of attorney to another, coupled with an interest in the performance of the contract, by which power the second party is to sign and receipt for all moneys due under the contract, it constitutes a transfer of the contract within the meaning of this section. (1877) 15 Op. Atty-Gen. 235.

Where a contractor made a power of attorney authorizing another to receive and collect the vouchers, and to receive and receipt for payments, and the nominal agent performed and subsequently procured an assignment of the nominal contractor's claim with authority to bring suit in his name, the contract was thereby annulled and no suit could be maintained thereon. *Francis's Case*, (1875) 11 Ct. Cl. 638.

Power of attorney to collect.—A power of attorney which authorizes the attorney to collect moneys which might be then due, or thereafter become due, to a contractor with the United States, and which does not profess to give the attorney any interest in the contract, does not cause an annulment of the contract under this section. (1879) 16 Op. Atty-Gen. 261.

Transfer by decree of court.—The transfer of the legal title of real property by virtue of a decree of a court of equity, carrying with it the right to rents accrued, is not an assignment of a claim under a contract within the prohibition of this section. *Mills v. U. S.*, (1884) 19 Ct. Cl. 79.

Foreclosure of mortgage on railroad.—A contract made with a railroad company for carrying the mails is annulled by the provision of this section, upon a foreclosure of a mortgage of all the assets of such railroad company and the sale thereunder to a new company, and such new company cannot maintain an action thereon against the United

States. *St. Paul, etc., R. Co. v. U. S.*, (1885) 112 U. S. 733, *affirming* (1883) 18 Ct. Cl. 406.

A contract for transporting the mails cannot be transferred or assigned, in whole or in part, without the consent of the postmaster-general, and such transfer being illegal it is not a valid consideration to support a promise to pay for a half interest in such contract. *Nix v. Bell*, (1881) 66 Ga. 665.

Assignment of a lease.—“Whatever may be the scope and effect of section 3737 it does not embrace a lease of real estate to be used for public purposes, under which the lessor is not required to perform any service for the government, and has nothing to do in respect to the lease except to receive from time to time the rent agreed to be paid. The assignment of such a lease is not within the mischief which Congress intended to prevent.” *Freedman's Sav., etc., Co. v. Shepherd*, (1888) 127 U. S. 494.

Assignment of money due on contract.—A contractor cannot assign and transfer the money coming to him from the United States under his contract so as to affect any one but himself, and a mere disbursing agent of the United States has no authority to do anything but to pay over the money when it is due. His acceptance of orders on the fund which he expects to disburse is of no validity. *Greenville Sav. Bank v. Lawrence*, (C. C. A. 1896) 76 Fed. Rep. 545.

Contracts with third parties for materials.—A contract with the United States to erect a public building, or to construct wing dams on a river, is not annulled by the fact that the contractor enters into a contract with third parties for the materials needed to enable him to carry out his contract with the government. *U. S. v. Farley*, (1899) 91 Fed. Rep. 474.

Effect of assignment on title.—The assignment of a government contract is void and passes no title, legal or equitable. *McCord's Case*, (1873) 9 Ct. Cl. 156.

Liability of original contractor.—“The prohibition found in section 3737 is intended to prevent such assignments of public contracts as would relieve the original contractor from the obligation of the contract with the government.” *U. S. v. Farley*, (1899) 91 Fed. Rep. 474.

The contract may still be treated by the government as obligatory upon the contractor notwithstanding the transfer. (1884) 18 Op. Atty-Gen. 88.

Rights of parties to assignment.—The parties to an assignment may suffer damage, but can derive no benefit from an assignment of a government contract. (1888) 19 Op. Atty-Gen. 186.

Liability of United States to assignee.—The transfer of a contract so as to enable the assignee to perform the service and claim the compensation stipulated for is forbidden by this section, and the United States cannot be held liable by the assignee of a contract for carrying mail. *St. Paul, etc., R. Co. v. U. S.*, (1885) 112 U. S. 733, *affirming* (1883) 18 Ct. Cl. 406.

Between contractor and assignee.—“The express declaration that, so far as the United

States are concerned, a transfer shall work an annulment of the contract carries, by clear implication, the declaration that it shall have no such effect as between the contractor and his transferee." *Burck v. Taylor*, (1894) 152 U. S. 634.

Suit for breach of transferred contract. — A suit cannot be maintained for damages for the breach by the United States of a transferred contract, but where there has been a delivery of goods under the contract duly accepted by the United States, an action may be maintained by the contractors for the use of the assignee in *quantum meruit*. *Wheeler's Case*, (1869) 5 Ct. Cl. 504.

Recovery on implied contract. — Where an express contract is void, the person who has delivered his goods to the government, the government having used them, may recover on the implied contract in *quantum meruit*. *Heathfield's Case*, (1872) 8 Ct. Cl. 215.

Transfer as defense to suit on implied contract. — Where a claimant sues on an implied contract arising from the impressment of his wagon train by the United States, the government cannot set up that he was a sub-contractor and the contract void under this statute. *Mason's Case*, (1878) 14 Ct. Cl. 59.

Suit by assignee of contract for similar goods. — Where a party brings an action in

his own name, and upon the implied contract arising from the taking of his own property for public use, it is no defense that he had been acting as assignee of a contract for the sale of similar goods, and that the transfer of such contracts renders them void. If the assignee of a public contract can be held to the liabilities of the original contractor he must nevertheless be put in default by proper notice. *Hersch's Case*, (1879) 15 Ct. Cl. 385.

Objection after contract performed. — Where the government treats a person as a contractor, and responsible as such, all through the work, and until its completion, and accepts the entire work as satisfactory and makes a final settlement with him, it may not make the objection that he was not a lawful contractor on the ground of a transfer by the contractor to one of his sureties of an interest in the contract. *Bowe v. U. S.*, (1890) 42 Fed. Rep. 761.

Attempted assignment as defense to suit for services performed. — An attempted assignment which the parties do not set up or claim under cannot, after a full performance, be set up by the government to prevent a recovery for service performed. The provisions of this section do not apply to such a case. *Dougherty v. U. S.*, (1883) 18 Ct. Cl. 496.

An act for the protection of persons furnishing materials and labor for the construction of public works.

[Act of Aug. 13, 1894, ch. 280, 28 Stat. L. 278.]

[SEC. 1.] [*Contractors for public buildings or work to give bond to pay for labor and material — suit on such bond.*] That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building or public work, shall be required before commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in such contract; and any person or persons making application therefor, and furnishing affidavit to the Department under the direction of which said work is being, or has been, prosecuted, that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, shall be furnished with a certified copy of said contract and bond, upon which said person or persons supplying such labor and materials shall have a right of action, and shall be authorized to bring suit in the name of the United States for his or their use and benefit against said contractor and sureties and to prosecute the same to final judgment and execution: *Provided*, That such action and its prosecutions shall involve the United States in no expense. [28 Stat. L. 278.]

The object of the Act was to afford a better method for enforcing against the contractor the claims of laborers and material-men who had done work or furnished material upon property actually belonging to the United States, such as public buildings — which could only be erected upon land to

which the United States had acquired a complete title — fortifications, river and harbor improvements, and such other things as are commonly understood under the designation of "public works." (1900) 23 Op. Atty.-Gen. 174.

Not retroactive. — "The Act of Congress

applies only to bonds executed from and after its passage, and was not intended to apply retroactively to bonds previously executed." *Sears v. Mahoney*, (1895) 66 Fed. Rep. 860.

No lien created.—The Act does not seem to have intended to create a lien. It seems merely to give a personal action on the bond "for labor and materials." *Sears v. Mahoney*, (1895) 66 Fed. Rep. 860.

Relation to state lien statutes.—This statute does not have the same aspect as the ordinary lien statutes in various states giving liens on buildings and other property, real and personal, for labor and material, and it is susceptible of and should receive a more liberal construction than such lien statutes. The court is not concluded by decisions with reference to the ordinary state statutory liens and can apply them only in a general way, and is not restricted by them so as to require a construction inconsistent with the remedial purposes of this statute. *American Surety Co. v. Lawrenceville Cement Co.*, (1901) 110 Fed. Rep. 717.

"The usual bond" means evidently such an obligation for the government's own protection, as it had long been in the habit of exacting from those with whom contracts were made for the doing of public work. *U. S. v. National Surety Co.*, (C. C. A. 1899) 92 Fed. Rep. 549.

Purpose of bond.—"The bond which is provided for by the Act was intended to perform a double function,—in the first place to secure to the government, as before, the faithful performance of all obligations which a contractor might assume towards it; and in the second place to protect third persons from whom the contractor obtained materials or labor." *U. S. v. National Surety Co.*, (C. C. A. 1899) 92 Fed. Rep. 549; *U. S. v. Rundle*, (C. C. A. 1900) 100 Fed. Rep. 400.

Waiver of bond.—Where the advertisement calls for a bond and none is subsequently given or asked, the acceptance of the material under the contract will be regarded as a waiver of the bond. *Friedenstein v. U. S.*, (1899) 35 Ct. Cl. 6.

For whose benefit.—This additional obligation provided for in this statute was prescribed for the benefit of the persons supplying labor and material, and it contains nothing to suggest that their claims under such bonds were to be secondary or subordinate to those of the government. *U. S. v. Heaton*, (C. C. A. 1904) 128 Fed. Rep. 416, *affirming* (1903) 124 Fed. Rep. 699.

Protection to subcontractors.—Subcontractors who supply labor and materials in the prosecution of the work under a contract between the government and the contractor are protected by this statute. Such subcontractors are those who are in the same relation to the contractor as he is to the government. *U. S. v. Jack*, (1900) 124 Mich. 210.

What labor protected.—"The labor which Congress intended to protect is evidently labor used directly upon the public work, claims for which would be made by the laborers primarily against the work." *U. S. v. Hyatt*, (C. C. A. 1899) 92 Fed. Rep. 442.

Rights of government under bond for ma-

terials.—The fact that the sureties on a contractor's bond covenant for the payment of labor and material furnished to the contractor guarantees nothing to the principal obligee, the government, although the latter permits an action on the bond for the benefit of the subcontractor. *U. S. Fidelity, etc., Co. v. Golden Pressed, etc., Brick Co.*, (1903) 191 U. S. 416.

Rights of carriers.—In an action brought in the Circuit Court for the district of Maine by the sureties on the bond of a government contractor asking the aid of the court by a bill in equity in ascertaining to whom and what payments should be made, it was said by Putman, J., that "the carrier ordinarily has a lien for his freight, which is a sufficient protection to him. Therefore, in cases of transportation by a carrier from distant points, or, indeed, from another port than the port at which the contractor's work is being done, the carrier would not ordinarily be protected by the statutory bond for two reasons: first, transportation for considerable distances in the regular course, by the ordinary lines, of either steam, sail, or rail, cannot easily be brought within the words of the statute, 'supplying labor or materials;' and, second, inasmuch as carriage of that character, especially under an ordinary bill of lading, or its equivalent, creates a well-recognized lien for freight, the equitable rule would apply that a carrier, under such circumstances, cannot give up his cargo and enforce his claim against a mere surety after he has so placed himself that the surety cannot be subrogated to the security which the law gave. The first objection, however, does not necessarily apply to truckmen who are moving materials from a place of landing to the exact locality of the work under contract, although the distance may be somewhat considerable, nor to water-borne transportation carried on by the servants of the contractor, or for short distances without the aid of steam or a fully equipped vessel. The second objection, moreover, must not be carried to an extreme, otherwise it would defeat the practical operation of the statute. Every person selling materials for cash holds a lien for the purchase money until he voluntarily waives it by delivery; and every person engaged in transportation who is not the mere servant of the owner of the merchandise transported, holds a carrier's lien even though the carriage is of miscellaneous parcels, over short distances in the immediate locality and at frequent irregular intervals. Nevertheless with reference to each such liens are not ordinarily insisted upon, and it would be an unreasonable construction of the statute to hold that it intended to interfere with the convenience of minor dealings in such methods as the usual practices establish. Therefore, as already stated with reference to either class, to insist on the fact that the lien is waived, and short credit given, would defeat the beneficial purpose of the statute and the practical ends which it is intended to accomplish." *American Surety Co. v. Lawrenceville Cement Co.*, (1901) 110 Fed. Rep. 717.

What contracts included.—The contracts here referred to relate to the construction of public buildings and the prosecution and completion of public works. (1900) 23 Op. Atty.-Gen. 174.

Contracts for naval vessels.—The Act does not refer to contracts for the construction of naval vessels. (1900) 23 Op. Atty.-Gen. 174.

Materials actually entering into work, only.—Where one has furnished materials to a contractor having a contract with the United States, he may recover from the surety on the contractor's bond a fair price for all such materials which he furnished and which actually entered into the construction of the work, and the expense in transporting such materials to the place where they were to be used under the contract, but he may not recover for tools and appliances to be used by the contractor for his own convenience and advantage in the execution of his contract. *U. S. v. Morgan*, (1900) 111 Fed. Rep. 474.

Contractor's plant and repairs thereto.—In connection with this statute a discrimination should be made between labor and materials consumed in the work or in connection therewith, and labor and materials made use of in furnishing the so-called contractor's plant and available not only for this but for other work. The statute, however, has no necessary relation to repairs of an incidental and comparatively inexpensive character, made on the plant during the progress of the work, representing only the ordinary wear and tear or the equivalent thereof. Such repairs, under some circumstances, are within the purview of the statute and are not always excluded by any rules of construction necessarily applicable to it. *American Surety Co. v. Lawrenceville Cement Co.*, (1901) 110 Fed. Rep. 717, *approving U. S. v. Morgan*, (1900) 111 Fed. Rep. 474.

Materials furnished to subcontractor.—Although a surety is liable for materials furnished to a contractor, this liability does not extend to materials for which his principal is not liable, such as materials furnished to a subcontractor. *American Surety Co. v. U. S.*, (1899) 127 Ala. 349.

Movable articles owned by contractor until acceptance.—This Act does not apply to cases of the construction of a specific article not attached to soil, the title of which is in the United States, but which is a mere movable article, the whole title to which remains in the contractor until its completion and acceptance by the government. (1900) 23 Op. Atty.-Gen. 174.

Barges furnished to third parties.—A company may not recover on a contractor's bond for the use of barges furnished to third parties and charged to them, where it is not shown that the barges were furnished to the contractor. *U. S. v. Simon*, (C. C. A. 1899) 98 Fed. Rep. 73.

Board supplied to workmen.—The fact that one supplied board for workmen engaged on the government work under an agreement with the contractor is not sufficient to entitle such a one to maintain an action on the

contractor's bond for labor or materials supplied. *U. S. v. Kimpland*, (1899) 93 Fed. Rep. 403.

Money loaned to pay for materials, etc.—“The protection afforded by the bond was to such only as might supply the contractor with labor and materials in the prosecution of his work. It did not extend to a bank which might lend money for the purpose of paying for such work and materials.” *U. S. v. Rundle*, (C. C. A. 1901) 107 Fed. Rep. 227.

Freight and demurrage upon timber furnished to a contractor may be included as a part of the cost of the materials and properly chargeable against the surety on a contractor's bond under the provisions of this section. *U. S. v. Hegeman*, (1903) 204 Pa. St. 438.

The carrying of stone by a railroad company is not supplying labor under this section, the labor of loading and unloading being performed by the contractors, and it cannot maintain an action therefor on the contractor's bond given under this section. *U. S. v. Hyatt*, (C. C. A. 1899) 92 Fed. Rep. 443.

Materials furnished to indemnitor of surety finishing contract.—Where a contractor and obligator on a bond given under this section gave up the work, and with the consent of all concerned an indemnitor of the surety to the bond took up the completion of the work for the contractor, under the contract with the government, and where a company kept on and furnished materials and labor to those taking up such contracts, under their contract with the original contractor with the government, such furnishing of materials and labor is covered by the bond of the contractor and such company comes within the description of “all persons supplying him labor and materials in the prosecution of the work.” *Mullin v. U. S.*, (C. C. A. 1901) 109 Fed. Rep. 817.

Effect of changes in contract.—“The sureties in a bond executed under this Act cannot claim exemption from liability to persons who have supplied labor or material to their principal to enable him to execute his contract with the United States, simply because the government and the contractor without the surety's knowledge have made some changes in the contract subsequent to the execution of the bond given to secure its performance, which do not alter the general character of the work contemplated by the contract or the general character of the materials which are necessary for its execution. When the government has executed the contract and taken and approved the bond, it ceases to be the agent of third parties whom the contractor employs in the execution of the work, or from whom he obtains materials, and the rights of such persons under the bond are unaffected by subsequent transactions between the government and the contractor.” *U. S. v. National Surety Co.*, (C. C. A. 1899) 92 Fed. Rep. 549.

Cost of completing contract immaterial.—“The liability created by the bond was in no respect affected by what it cost to complete the work in accordance with the contract whether completed by the contractor himself or his sureties. Full performance of its

terms and conditions was what the contract called for, and to secure which the bond was exacted and executed. The United States having received such full performance, received all that it was entitled to, and therefore had no cause of action upon the bond; but it received nothing more than it was entitled to, however much it may have cost the contractor or his sureties to completely perform the contract." *U. S. v. Rundle*, (C. C. A. 1900) 100 Fed. Rep. 400.

Completion of contract at loss by sureties.—The fact that the completion of the work under a contract with the government, left unfinished by the contractor, was undertaken by the sureties on his bond and was done at a loss of more than the penal sum of the bond, will not relieve them of their liability under the bond. *Griffith v. Rundle*, (1900) 23 Wash. 453.

An extension of time for payment made by materialmen by their taking promissory notes for such payment does not discharge the surety from liability where no damage results thereby to the surety or where such extension is not unreasonable. *U. S. Fidelity, etc., Co. v. Golden Pressed, etc., Brick Co.*, (1903) 191 U. S. 416.

Extension of time beyond final settlement.—Looking to the opportunity for protecting himself which the surety has, if the debt for the materials is due when the final payment is made by the government, and if the materialman designedly extends the payment beyond that time, he should be held to have released the surety and to have elected to look solely to the debtor. *U. S. v. American Bonding, etc., Co.*, (1898) 89 Fed. Rep. 921.

United States as trustee.—"The United States by the force of the statute voluntarily make themselves trustee, alike for their own interest and for the interests of the individuals intended to be protected; and having thus voluntarily created and accepted a trust they are barred by equitable principles from asserting for themselves any advantage over other beneficiaries." *American Surety Co. v. Lawrenceville Cement Co.*, (1899) 96 Fed. Rep. 25.

The equitable rule of pro rata distribution exists not only between the United States and individual claimants, but also as between individual claimants themselves. *American Surety Co. v. Lawrenceville Cement Co.*, (1899) 96 Fed. Rep. 25.

Who may sue.—"The right of action created by the bond in favor of laborers and materialmen is exclusively vested in them by statute. They alone are authorized to bring the suit and to prosecute the same to final judgment and execution. The United States have no interest, either directly or indirectly, in the controversy; nor can they be made liable for costs. The United States, as sole plaintiffs, could not maintain a suit in their own name upon the bond for the recovery of the value of labor or materials supplied to the contractor in the prosecution of the work." *U. S. v. Henderlong*, (1900) 102 Fed. Rep. 2.

Suit by United States.—"The Act does

not authorize the United States to bring suits of its own motion against the obligors in such bonds as are therein provided for, to recover what is due to laborers and materialmen. It is not empowered to act in their behalf in that respect, but such actions can only be brought at the instance of persons who furnish labor and materials, who are authorized, without previous leave being obtained from any executive department, to sue in the name of the United States, and control the litigation precisely as they might control it if the suits were brought in their own name." *U. S. v. National Surety Co.*, (C. C. A. 1899) 92 Fed. Rep. 549.

In name of United States.—This statute provides for a suit in the name of the United States only in cases where the person or persons for whose use and benefit the suit is brought have supplied the contractor "labor and materials in the prosecution of the work provided for in such contract." *U. S. v. American Surety Co.*, (1903) 127 Fed. Rep. 490.

The statute merely delegates authority to the laborer or materialman to use the name of the United States for his use and benefit in any court having jurisdiction of the subject-matter and the parties. *U. S. v. Henderlong*, (1900) 102 Fed. Rep. 2.

In the absence of statutory regulation, the overwhelming weight of authority makes it certain that the laborer or materialman could maintain an action in his own name against the principal and sureties in the bond for the recovery of the value of the labor or material supplied in the prosecution of the work. *U. S. v. Henderlong*, (1900) 102 Fed. Rep. 2.

Assignment of rights of laborers and materialmen.—"The obligation is not limited to the laborers and materialmen personally, and their rights in respect to it may pass by assignment." *U. S. v. Rundle*, (C. C. A. 1900) 100 Fed. Rep. 400.

Requisites for jurisdiction of federal courts.—"The courts of the United States should not take cognizance of the suits of laborers and materialmen unless the citizenship of the parties, and the amount involved in the controversy, are such as would give jurisdiction as in the case of other suitors." *U. S. v. Henderlong*, (1900) 102 Fed. Rep. 2.

Suit in what district.—It was held in *U. S. v. O'Brien*, (1903), 120 Fed. Rep. 446, that even if a suit brought against a surety on the bond of a government contractor under this Act was a suit brought by the United States, within the meaning of the Judiciary Act of 1887, yet it could not be maintained in a district of which the defendant was not an inhabitant.

Action in state court.—"As the statute does not prescribe the court in which the suit shall be brought, there would seem to be no doubt that it may be brought in the name of the United States for the use of the laborer or materialman in any proper state court." *U. S. v. Henderlong*, (1900) 102 Fed. Rep. 2. See to same effect *U. S. v. Rundle*, (1901) 27 Wash. 7.

Allegations necessary.—In an action under

this section for labor and materials the complaint must allege that the labor and materials were supplied in the prosecution of the work provided for in the contract and that the contractor covenanted in the bond to make prompt payment "to all persons supplying," etc.; and the contract and the bond must be made a part of the complaint.

U. S. v. American Surety Co., (1903) 127 Fed. Rep. 490.

Want of immediate payment as defense. — The word "promptly" does not mean that the want of immediate payment should be set up as a defense by the surety. U. S. Fidelity, etc., Co. v. Golden Pressed, etc., Brick Co., (1903) 191 U. S. 416.

Sec. 2. [*Security for costs.*] Provided that in such case the court in which such action is brought is authorized to require proper security for costs in case judgment is for the defendant. [*28 Stat. L. 278.*]

Sec. 21. [*Provisions in contracts for liquidated damages for delay.*] That in all contracts entered into with the United States, after the date of the approval of this Act, for the construction or repair of any public building or public work under the control of the Treasury Department, a stipulation shall be inserted for liquidated damages for delay; and the Secretary of the Treasury is hereby authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable; and in all suits hereafter commenced on any such contracts or on any bond given in connection therewith it shall not be necessary for the United States, whether plaintiff or defendant, to prove actual or specific damages sustained by the Government by reason of delays, but such stipulation for liquidated damages shall be conclusive and binding upon all parties. [*32 Stat. L. 326.*]

This is from the Act of June 6, 1902, ch. 1036, "An Act to increase the limit of cost of certain public buildings, to authorize the

purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes."

Sec. 3738. [*Eight hours to be a day's work.*] See LABOR, vol. 4, p. 778.]

Sec. 3739. [*Members of Congress not to be interested in contracts.*] No member of or Delegate to Congress shall directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into in behalf of the United States, by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same, when demanded, by the proper officer of the Department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced. [*R. S.*]

Act of April 21, 1808, ch. 48, 2 Stat. L. 484. See further PUBLIC OFFICERS.

The object of the statute is only to prevent jobbing between members of the legislature and executive for the pecuniary advantage of the former. (1842) 4 Op. Atty.-Gen. 47.

How construed. — This is a highly penal law; and, besides, is in derogation of common

right; on both accounts, therefore, if not to be interpreted strictly, at least not to be extended by any latitude of inference and construction. (1842) 4 Op. Atty.-Gen. 47.

The word "void" in this Act is used in the sense of "null," or of no effect from the beginning, and not admitting of ratification. U. S. v. Dietrich, (1904) 126 Fed. Rep. 671.

When or how members of Congress become

parties immaterial. — Members of Congress and delegates are prohibited from holding or enjoying any contract or agreement with the United States irrespective of when or how they became parties to it. *U. S. v. Dietrich*, (1904) 126 Fed. Rep. 671.

Nature of interest necessary to disqualify. — The interest to disqualify a member from taking, or an officer from offering, a contract must be an immediate (however indirect) personal interest in its benefits. That he may ultimately profit by his contract — *e. g.*, as heir, devisee, etc. — is not enough. Neither is it enough that his nearest friends or relatives may profit by it. (1842) 4 Op. Atty.-Gen. 47.

Member of Congress in partnership. — A partnership of which a member of Congress is a member cannot enter into a contract with the government; but, if he withdraw from it, the contract may be concluded with the other partners. (1842) 4 Op. Atty.-Gen. 47.

Member of Congress as bondsman. — Signing a contractor's bond would not give the surety any immediate personal interest in its benefits. He is not a contractor with the government, nor does he under any circumstances become so under the statute; therefore, a member of, or delegate to, Congress may be lawfully accepted as a bondsman on a contract with the government. (1885) 18 Op. Atty.-Gen. 286.

Delegate elected but not sworn in. — The provisions of this section, and R. S. sec. 3741, do not apply to a contract with one who was, after the making of the contract, elected a delegate to Congress but had not yet been sworn in, nor had there been any session of Congress since his election. Such person would not become a "member of, or delegate to, Congress" until Congress had accepted him and he had accepted the duties of the office and taken the appropriate oath. Until these events have occurred this legislation has no application to him. (1877) 15 Op. Atty.-Gen. 280.

Applicable to all contracts. — A prohibition

of this section extends to any contract or agreement no matter how fairly obtained or held, how reasonable in its terms or how advantageous to the United States. *U. S. v. Dietrich*, (1904) 126 Fed. Rep. 671.

Services included. — The policy of the law is to prevent the exercise of executive influence over the members of Congress by means of contracts; and whether the contract be for the services of a lawyer, a physician, a mail carrier, or a surveyor, it is equally within the mischief to be prevented. (1826) 2 Op. Atty.-Gen. 38.

Members of Congress as counsel to district attorney. — Although the employment of members of Congress as assistant counsel to the district attorney of the United States was not within the view of Congress, this statute forbids all contracts between officers of the government and members of Congress. (1826) 2 Op. Atty.-Gen. 38.

Lawful partial performance. — It is not necessary to invalidate from the beginning a contract lawfully entered into when during its life the individual with whom it was made becomes "a member of, or delegate to, Congress." The contract should be terminated in so far as it is executory, but without extinguishing or avoiding, even if that were permissible, the rights of either party acquired by its lawful performance or by its breach up to that time. *U. S. v. Dietrich*, (1904) 126 Fed. Rep. 671, *disapproving* (1809) 5 Op. Atty.-Gen. 697.

Invalidating contract transferred to member of Congress. — Where a contract valid when made is subsequently attempted to be assigned or transferred to "a member of, or delegate to, Congress," it is not necessary, if permissible, to invalidate it from the very beginning. The purpose of the statute is accomplished by invalidating only the assignment or transfer, and by leaving the individual with whom the contract was originally made charged with the full performance of his obligations thereunder. *U. S. v. Dietrich*, (1904) 126 Fed. Rep. 671.

Sec. 3740. [*What interest members of Congress may have.*] Nothing contained in the preceding section shall extend, or be construed to extend, to any contract or agreement, made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any member of or delegate to Congress, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement. [*R. S.*]

Act of April 21, 1808, ch. 48, 2 Stat. L. 484.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by adding after the words "by any member of" the words "or delegate to," as given above.

Contracts for carrying the mail made with railroad corporations are excepted by this statute from the operation of the provisions of R. S. sec. 3739. (1885) 18 Op. Atty.-Gen. 112.

Sec. 3741. [*Stipulation that no member of Congress has an interest.*] In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of or delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. [*R. S.*]

Act of April 21, 1808, ch. 48, 2 Stat. L. 484.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by adding after the words "that no member of" the words "or delegate to," as given above.

Insertion of condition in mail contracts.—

The express condition mentioned in this section need not be inserted in contracts for carrying the mail made with railroad corporations. (1885) 18 Op. Atty.-Gen. 112.

Sec. 3742. [*Penalty against officer for making contract with a member of Congress.*] Every officer who, on behalf of the United States, directly or indirectly makes or enters into any contract, bargain, or agreement in writing or otherwise, other than such as are hereinbefore excepted, with any member of or delegate to Congress, shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. [R. S.]

Act of April 21, 1808, ch. 48, 2 Stat. L. 484.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by

adding after the words "with any member of" the words "or delegate to," as given above.

SEC. 10. [*Employees, etc., of United States not to be interested in Indian contracts, etc.—penalty for violation.*] That no agent or employee of the United States Government, or of any of the Departments thereof, while in the service of the Government, shall have any interest, directly or indirectly, contingent or absolute, near or remote, in any contract made, or under negotiation, with the Government, or with the Indians, for the purchase or transportation or delivery of goods or supplies for the Indians, or for the removal of the Indians; nor shall any such agent or employee collude with any person who may attempt to obtain any such contract for the purpose of enabling such person to obtain the same. The violation of any of the provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, and by removal from office; and, in addition thereto, the court shall, in its discretion, have the power to punish by imprisonment of not more than six months. * * * [18 Stat. L. 177.]

This is from the Indian Appropriation Act of June 22, 1874, ch. 389.

Sec. 3743. [*Deposit of contracts.*] All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress. [R. S.]

This section was amended "to read as" above by the Act of July 31, 1894, ch. 174, sec. 18, 28 Stat. L. 210. The section originally read as follows:

"Sec. 3743. All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited in the office of the First Comptroller of the Treasury of the United States, within ninety days after their respective dates." Act of July 16, 1798, ch. 85, 1 Stat. L. 610.

It was first amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by adding after the words "Treasury of the United

States" the words "the Second Comptroller of the Treasury of the United States, or the Commissioner of Customs, respectively, according to the nature thereof."

It was again amended as stated above to read as set out in the text.

Under the Act of July 16, 1798, it was held in (1832) 2 Op. Atty.-Gen. 518, that contracts for bricks and masonry at Fort Monroe ought to have been deposited with the comptroller, and accounts arising therefrom ought to be adjusted at the treasury department; until that shall be done the secretary of war cannot be called on to order payment.

SEC. 7. [*Copies of contracts for Indian service to be furnished Second Auditor.*] * * * That copies of all contracts made by the Commissioner of Indian Affairs, or any other officer of the Government, for the Indian service, shall be furnished to the Second Auditor of the Treasury before any payment shall be made thereon. [18 Stat. L. 450.]

This is from the Indian Appropriation Act of March 3, 1875, ch. 132.

SEC. 3. [*Proposals, etc., for contracts in Indian service to be filed and preserved — abstracts to be filed with contracts.*] That in all lettings of contracts in connection with the Indian service, the proposals or bids received shall be filed and preserved; and in the annual report of the Commissioner of Indian Affairs, there shall be embodied a detailed and tabular statement of all bids and proposals received for any services, supplies, or annuity-goods for the Indian service, together with a detailed statement of all awards of contracts made for any such services, supplies, and annuity-goods for which said bids or proposals were received; and an abstract of all bids or proposals received for the supplies or services embraced in any contract shall be attached to, and filed with, the said contract when the same is filed in the office of the Second Comptroller of the Treasury. [19 Stat. L. 176.]

This is from the Indian Appropriation Act of Aug. 15, 1876, ch. 289.

Sec. 3744. [*Contracts to be in writing.*] It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return. [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 411.

Nature of statute. — This statute is mandatory and imperative in its requirements and not merely directory to the parties. *Henderson's Case*, (1868) 4 Ct. Cl. 75. See also *Steele v. U. S.*, (1884) 19 Ct. Cl. 181; *Neuchatel Co.'s Case*, (1881) 17 Ct. Cl. 386; (1898) 22 Op. Atty.-Gen. 98.

The Act is mandatory and in effect prohibits and renders unlawful any other mode of making the contract. *Clark v. U. S.*, (1877) 95 U. S. 539.

Statute of frauds. — This statute is as between the government and its contractor a statute of frauds. It does not prohibit contracts, but regulates the manner of making them. *Lindsley's Case*, (1868) 4 Ct. Cl. 360; *Danold's Case*, (1869) 5 Ct. Cl. 68.

This Act is a statute to prevent frauds and perjuries and its language is mandatory.

Calvary Cathedral v. U. S., (1894) 29 Ct. Cl. 269.

Relation to English law. — "Section 3744 is a statute of frauds more stringent and restricted than the English statute and others based upon it, in that part performance does not take a case out of the statute." (1898) 22 Op. Atty.-Gen. 98, citing *Jones's Case*, (1875) 11 Ct. Cl. 733; *South Boston Iron Co. v. U. S.*, 18 Ct. Cl. 165, *affirmed* (1886) 118 U. S. 37; *Barnes v. District of Columbia*, (1887) 22 Ct. Cl. 366.

Extent of section. — This statute extends not merely to quartermasters and ordinary purchasing agents, but to all officers in the war, navy, and interior departments, and to the secretaries of those departments themselves, and embraces every contract made by them. *Danold's Case*, (1869) 5 Ct. Cl. 68.

Since the Acts of June 2, 1862, and July

17, 1862, every contract made by the secretaries of war, navy, or interior, or by the officers under them, must be reduced to writing and signed or, as executory contracts, they will be void. *Danold's Case*, (1869) 5 Ct. Cl. 68.

Prohibition of other modes.—The statute was intended to operate to prevent reckless engagements and frauds, and it makes it unlawful for contracting officers to make contracts in any other way than by writing signed by the parties. This is equivalent to prohibiting any other mode of making contracts. (1892) 20 Op. Atty-Gen. 496.

Upon whom mandatory.—This Act is mandatory and obligatory as to the provision for a written contract not only upon the officer of the United States entering into the contract but also upon the contractor. *Danold's Case*, (1869) 5 Ct. Cl. 68.

Whose duty to reduce to writing.—It is as much the duty of the contractor as of the officer of the United States to see that the contract is reduced to writing as provided in this section. *Henderson's Case*, (1868) 4 Ct. Cl. 75.

A party who makes a contract with an officer without having it reduced to writing is knowingly accessory to a violation of duty on his part. Such a party aids in the violation of the law. The contract itself is affected, and must conform to the requirements of the statute until it passes from the observation and control of the parties who enter into it. After that, if the officer fails to follow the further directions of the Act with regard to affixing his affidavit and returning a copy of the contract to the proper officer, the party is not responsible for this neglect. *Clark v. U. S.*, (1877) 95 U. S. 539.

Ignorance of contractor.—The fact that the officers of the government neglected their statutory duty, and that the contractor, being ignorant of the law, relied upon them and complied with their demands in the belief that he was legally bound to do so, when he was not, does not take the case out of the statute. *St. Louis Hay, etc., Co. v. U. S.*, (1902) 37 Ct. Cl. 283.

Penalty for failure to reduce to writing.—There is no express penalty for the failure to reduce a contract to writing as provided by this section. *Henderson's Case*, (1868) 4 Ct. Cl. 75.

Verification and return by whom.—The provisions of this section as to verification and the return to the returns office of a contract are mandatory upon the officers alone, and the omission to perform such acts, while subjecting the officer making the contract to the penalty provided in R. S. sec. 3746, has no effect upon the contractor. *Henderson's Case*, (1868) 4 Ct. Cl. 75.

Necessity to show filing.—Where a contract has been signed, filed, etc., as required by this section, it is not necessary that a contractor claiming thereunder should show that it has been filed in the returns office of the interior department by the officer signing the same. *Power v. U. S.*, (1883) 18 Ct. Cl. 263.

Effect of failure to make return.—A con-

tract reduced to writing and executed with all the formalities and solemnity that the law required will not be invalidated by the failure of the officer to make his proper return of the same. *Henderson's Case*, (1868) 4 Ct. Cl. 75.

When contracts become valid.—Contracts contemplated by this section do not become valid until executed in accordance with its requirements. *South Boston Iron Co. v. U. S.*, (1886) 118 U. S. 38; *Clark v. U. S.*, (1877) 95 U. S. 542; (1892) 20 Op. Atty-Gen. 445.

"It is the final written instrument that the statute contemplates shall be executed and signed by the parties and which shall contain and be the proof of their obligations and rights." *Monroe v. U. S.*, (1902) 184 U. S. 527.

Preliminary memoranda.—To bind the United States contracts by the navy department must be in writing and signed by the contracting parties. The preliminary memoranda made by the parties for use in preparing a contract for execution in form required by law are not sufficient. *South Boston Iron Co. v. U. S.*, (1886) 118 U. S. 42; *Clark v. U. S.*, (1877) 95 U. S. 539; (1892) 20 Op. Atty-Gen. 496.

The negotiations, correspondence, proposals, acceptance, etc., in writing, signed in part by one party, and in part by the other, do not constitute sufficient compliance with the provisions of this section to constitute a valid contract. *South Boston Iron Co. v. U. S.*, (1883) 18 Ct. Cl. 165, *affirmed* (1886) 118 U. S. 38.

Preliminary negotiations after execution of contract.—The preliminary advertisements, specifications, and proposals, and acceptance of proposals, must be viewed as becoming a part of the statutory contract when the contract was executed as required by this statute, but until then only as a part of the negotiations looking to a formal contract. *McLaughlin v. U. S.*, (1901) 36 Ct. Cl. 177.

When contract becomes binding.—In *Adams's Case*, (1865) 1 Ct. Cl. 195, however, it was held that where a party furnishes sureties for the performance of his bid, if accepted, the contract becomes mutual and binding from the moment of its acceptance, although a formal written contract is to be subsequently executed.

Contracts made in an emergency without advertisement are subject to the provisions of this section. *Cobb v. U. S.*, (1883) 18 Ct. Cl. 515, *overruling* (1871) 7 Ct. Cl. 470.

During war of rebellion.—This Act during the war of the rebellion was suspended with regard to contracts for army supplies in an emergency by the Act of July 4, 1864, 13 Stat. L. 394. *Cobb's Case*, (1871) 7 Ct. Cl. 470; *Thompson's Case*, (1873) 9 Ct. Cl. 187; *Cobb's Case*, (1873) 9 Ct. Cl. 294.

An agreement on the behalf of the post-office department need not be in writing. The provisions of this section apply only to the war, navy, and interior departments. *Little v. U. S.*, (1884) 19 Ct. Cl. 272.

While it has been held generally under the statutes applicable to contracts of the

post-office department that proposals duly accepted without formal agreement may constitute a contract complete and binding on the government, this is not the case with contracts for public works and other contracts under this section. (1898) 22 Op. Atty-Gen. 98.

A contract for the sale of sand to be taken from time to time from the owner's sand bed by the United States is void when not in writing, and if the owner can recover in any event he must show the value of the sand taken. *Lindaley's Case*, (1868) 4 Ct. Cl. 360; *Salomon's Case*, (1871) 7 Ct. Cl. 486.

Construction and repair of vessel.—An oral contract made by the chief of the bureau of construction and repair for work to be done on a vessel is void under the provisions of this statute. *Steele v. U. S.*, (1884) 19 Ct. Cl. 181.

Damages to vessel hired on parol contract.—A recovery may not be had for damages to a vessel hired by a quartermaster on a parol contract in which he agreed to return the same in as good condition as when hired. The prohibition of this section forbids such recovery. *Lender's Case*, (1871) 7 Ct. Cl. 530.

Substitution of supplies.—An oral agreement to accept one kind of grain instead of another, under a written contract, is void under the provisions of this section, but for such grain actually delivered and used the claimant is entitled to payment at a fair and reasonable value upon an implied assumpsit independently of a written contract. *Mitchell v. U. S.*, (1884) 19 Ct. Cl. 39.

Performed contract.—The invalidity of a contract by reason of the provisions of this section is immaterial if the contract has been performed. *St. Louis Hay, etc., Co. v. U. S.*, (1903) 191 U. S. 159.

Extension of time of performance.—This Act is not infringed if the proper officer accepts the delivery of supplies after the day stipulated; nor is a verbal agreement to extend the time of performance invalid. *Salomon v. U. S.*, (1873) 19 Wall. (U. S.) 17, *reversing* (1871) 7 Ct. Cl. 482.

When, under a written contract, made by a person to deliver such supplies as corn at one time fixed, the quartermaster in charge receives part of the corn from such person for the government, and then at a later date, no objection being made to the delay, receives the rest, and gives a receipt and voucher for the amount and the price, and the government uses such part of it as it wants, and suffers the remainder to decay by exposure and neglect, there is an implied contract to pay the value of such corn, which value may, in the absence of other testimony, be presumed to be the price fixed in the voucher by the quartermaster. *Salomon v. U. S.*, (1873) 19 Wall. (U. S.) 17, *reversing* (1871) 7 Ct. Cl. 482.

Time of the essence of contract.—As this is a statute of frauds it necessarily excludes an unwritten alteration or substitution; therefore, where time is of the essence of the contract the time of delivery cannot be extended unless the extension be evidenced in the man-

ner prescribed in this section. *Jones's Case*, (1875) 11 Ct. Cl. 733, *affirmed* (1877) 96 U. S. 24.

Executory parol contract.—A parol agreement while a contract is executory is not obligatory on the government. (1898) 22 Op. Atty-Gen. 98.

Effect of performance of parol contract.—Where, however, a parol contract has been wholly or partly executed on one side, the party performing will be entitled to recover the fair value of his property or service as upon an implied contract for a *quantum meruit*. *Clark v. U. S.*, (1877) 95 U. S. 539.

Performance by one side and acceptance on the other of the conditions of a contract not in writing are sufficient to a certain extent to take a case out of the prohibition of the statute and to leave it within the equitable rules of implied contracts. Ratification of such a contract may be made by the acts of the parties. *Danold's Case*, (1869) 5 Ct. Cl. 68.

A parol agreement enlarging the quantity of work required by a written contract, is not obligatory upon the government where the contract is by law required to be in writing. But compensation for work actually done thereunder may be recovered on an implied assumpsit. *Wilson v. U. S.*, (1888) 23 Ct. Cl. 77.

Implied contract for extra material and of work required by a written contract is not into by the war department for a building, and full specifications are given and the cost is limited, and it is provided in the contract that no extra charge shall be made for any modification or alteration in the plans, unless an agreement with regard to the same be made in writing, and where an appropriation is made agreeing with the contract price, if the officer of the government in charge of the work orders a change to be made, and extra materials and labor to be furnished, and the building thereby is rendered more valuable and useful, and the government accepts and uses the building, it is liable for a fair and reasonable value of the materials and labor so supplied on an implied contract notwithstanding the fact that the cost exceeds the appropriation, as forbidden by R. S. sec. 3733, and notwithstanding the fact that such extra materials and labor were not contracted for in accordance with the provisions of this section. *Grant's Case*, (1869) 5 Ct. Cl. 72.

Responsibility of officer ordering extra work.—Where additional work not called for in the contract is ordered by a subordinate officer it will be deemed voluntary service by the contractor for which no recovery may be had. But where it is ordered by a responsible officer with authority recovery may be had on an implied contract to the extent of the benefit of the government. *Barlow v. U. S.*, (1900) 35 Ct. Cl. 514.

Recovery for goods actually purchased and used.—A written contract is not necessary to sustain a recovery where goods have been delivered to and used by the government. There is a distinction between an action on an executory contract to recover damages for

nonperformance and an action on the implied obligation to pay for articles actually purchased and used by the government. *Burchiel's Case*, (1868) 4 Ct. Cl. 549; *Dougherty v. U. S.*, (1883) 18 Ct. Cl. 496.

Purchase according to practice or custom. — Where a statute directs judgment, if it appears that the purchase of certain horses was made according to "the practice or custom" of the quartermaster's department, and the practice at the time was to purchase horses, payable on delivery, without written contracts, the case is taken out of this statute. *Finn v. U. S.*, (1891) 26 Ct. Cl. 436.

Action for breach. — Where contracts must be in writing no action can be maintained for a breach unless the requirements of the statute have been complied with. *St. Louis Hay, etc., Co. v. U. S.*, (1902) 37 Ct. Cl. 283.

Action by principal on contract by agent. — Since the enactment of this section the doctrine that an action may be brought by the principal, though the contract was in the name of the agent, is not applicable to contracts made with the war, navy, and interior departments. *Calvary Cathedral v. U. S.*, (1894) 29 Ct. Cl. 269.

Sec. 3745. [Oath to contract.] It shall be the further duty of the officer, before making his return, according to the preceding section, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me personally with ———; that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided." [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 411.

Sec. 3746. [Penalty for omitting returns.] Every officer who makes any contract, and fails or neglects to make return of the same, according to the provisions of the two preceding sections, unless from unavoidable accident or causes not within his control, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred, and imprisoned not more than six months. [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 411.

Sec. 3747. [Instructions.] It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to furnish every officer appointed by them with authority to make contracts on behalf of the Government with a printed letter of instructions, setting forth the duties of such officer, under the two preceding sections, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required to be affixed thereto, so that all the instruments may be as nearly uniform as possible. [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 411.

Sec. 512. [Returns office.] The Secretary of the Interior shall from time to time provide a proper apartment, to be called the Returns Office, in which he shall cause to be filed the returns of contracts made by the Secretary of War, the Secretary of the Navy, and the Secretary of the Interior, and shall appoint a clerk of the first class to attend to the same. [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 412.
Secs. 512-515 constitute ch. 8 (entitled
"The Returns Office") of title 11 (entitled

"The Department of the Interior") of the
Revised Statutes.

Sec. 513. [Clerk to file returns.] The clerk of the Returns Office shall file all returns made to the Office, so that the same may be of easy access, keeping

all returns made by the same officer in the same place, and numbering them in the order in which they are made. [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 412.

Sec. 514. [*Indexes.*] The clerk of the Returns Office shall provide and keep an index-book, with the names of the contracting parties, and the number of each contract opposite to the names; and shall submit the index-book and returns to any person desiring to inspect it. [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 412.

Sec. 515. [*Copies of returns.*] The clerk of the Returns Office shall furnish copies of such returns to any person paying therefor at the rate of five cents for every one hundred words, to which copies certificates shall be appended in every case by the clerk making the same, attesting their correctness, and that each copy so certified is a full and complete copy of the return. [R. S.]

Act of June 2, 1862, ch. 93, 12 Stat. L. 412.

PUBLIC DEBT.

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- Of Cuba*, see *CUBA*, vol. 2, p. 362.
Of Philippine Islands, see *PHILIPPINE ISLANDS*, vol. 5, p. 709.
Of Hawaiian Islands, see *HAWAIIAN ISLANDS*, vol. 3, p. 181.
Issue and Redemption of United States Notes, Treasury Notes, etc., see *COINAGE, MINTS, AND ASSAY OFFICES*, vol. 2, pp. 123, 124, 131; *CURRENCY*, vol. 2, p. 366.
False Demand on Fraudulent Power of Attorney, see *COUNTERFEITING AND FORGING*, vol. 2, p. 309.
False Personation of Holder, see *FALSE PERSONATION*, vol. 3, p. 92.
Appropriations to Pay Interest, see *ESTIMATES, APPROPRIATIONS, AND REPORTS*, vol. 2, pp. 904-906.
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 And see generally *COINAGE, MINTS, AND ASSAY OFFICES*, vol. 2, p. 105; *COUNTERFEITING AND FORGING*, vol. 2, p. 297; *CURRENCY*, vol. 2, p. 366; *NATIONAL BANKS*, vol. 5, p. 75; *PUBLIC MONEYS; TREASURY DEPARTMENT*.

Sec. 3693. [*Payment in coin.*] The faith of the United States is solemnly pledged to the payment in coin or its equivalent of all the obligations of the United States not bearing interest, known as United States notes, and of all the interest-bearing obligations of the United States, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same may be paid in lawful money or other currency than gold and silver. But none of the interest-bearing obligations not already due shall be redeemed or paid before maturity, unless at such time United States notes are convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at par in coin. The faith of the United States is also solemnly pledged to make provisions at the earliest practicable period for the redemption of the United States notes in coin. [R. S.]

Act of March 18, 1869, ch. 1, 16 Stat. L. 1.
Secs. 3693-3708 constitute title 42 of the Revised Statutes, entitled "The Public Debt."

Compromised claim.—Parties having claims against the United States which are disputed by the officers authorized to adjust the same, may compromise the claim, and may accept payment in a different medium from that promised, or may accept a smaller sum than that claimed; and where it appears that the claimant voluntarily entered into a compromise and accepted payment in full in a different medium from that promised, or accepted a smaller sum than that claimed and executed a discharge in full for the whole claim, or voluntarily surrendered to the proper officer the evidences of the claim for cancellation, he cannot subsequently sue the United States and recover in the Court of Claims for any part of the claim voluntarily relinquished in the compromise. *Savage's Case*, (1861) 11 Ct. Cl. 215, *citing Sweeney v. U. S.*, (1872) 17 Wall. (U. S.) 77;

U. S. v. Child, (1870) 12 Wall. (U. S.) 244; *U. S. v. Justice*, (1871) 14 Wall. (U. S.) 549.

Payment in different medium or by smaller sum.—The unconditional acceptance of a medium of payment different from that promised by the United States, or absolute acceptance of a smaller sum from the secretary of the treasury than the one claimed from the United States, even in a case where the amount relinquished is large, does not leave the United States open to further claim on the ground of duress, if the acceptance of the different medium or the smaller sum is voluntary, and without intimidation, and with a full knowledge of the circumstances; nor is the case changed if it appears that the claimant was induced to accept the different medium or the smaller sum in full as a means to secure an earlier payment of the claim than he could otherwise hope to procure. *Savage's Case*, 11 Ct. Cl. 215, *citing Mason v. U. S.*, (1872) 17 Wall. (U. S.) 74.

Sec. 3694. [*Application of coin paid for duties.*] The coin paid for duties on imported goods shall be set apart as a special fund, and shall be applied as follows:

First. [*Payment of interest on public debt.*] To the payment in coin of the interest on the bonds and notes of the United States.

Second. [*Sinking-fund.*] To the purchase or payment of one per centum of the entire debt of the United States, to be made within each fiscal year, which is to be set apart as a sinking-fund, and the interest of which shall in like manner be applied to the purchase or payment of the public debt, as the Secretary of the Treasury shall from time to time direct.

Third. [*Residue.*] The residue to be paid into the Treasury. [R. S.]

Act of Feb. 25, 1862, ch. 33, 12 Stat. L. 346.

SEC. 32. [*Loans — certificates of indebtedness — counterfeiting.*] That the Secretary of the Treasury is authorized to borrow from time to time, at a rate of interest not exceeding three per centum per annum, such sum or sums as, in his judgment, may be necessary to meet public expenditures, and to issue therefor certificates of indebtedness in such form as he may prescribe and in denominations of fifty dollars or some multiple of that sum; and each certificate

so issued shall be payable, with the interest accrued thereon, at such time, not exceeding one year from the date of its issue, as the Secretary of the Treasury may prescribe: *Provided*, That the amount of such certificates outstanding shall at no time exceed one hundred millions of dollars; and the provisions of existing law respecting counterfeiting and other fraudulent practices are hereby extended to the bonds and certificates of indebtedness authorized by this Act. [30 Stat. L. 467.]

This and sec. 33 following are from the Act of June 13, 1898, ch. 448, "An Act to provide ways and means to meet war expenditures, and for other purposes."

Counterfeiting. — See COUNTERFEITING AND FORGING, vol. 2, p. 297.

SEC. 33. [*Issue of bonds to secure loans.*] That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time as the proceeds may be required to defray expenditures authorized on account of the existing war (such proceeds when received to be used only for the purpose of meeting such war expenditures) the sum of four hundred million dollars, or so much thereof as may be necessary, and to prepare and issue therefor, coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of twenty dollars or some multiple of that sum, redeemable in coin at the pleasure of the United States after ten years from the date of their issue, and payable twenty years from such date, and bearing interest payable quarterly in coin at the rate of three per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That the bonds authorized by this section shall be first offered at par as a popular loan under such regulations, prescribed by the Secretary of the Treasury, as will give opportunity to the citizens of the United States to participate in the subscriptions to such loan, and in allotting said bonds the several subscriptions of individuals shall be first accepted, and the subscriptions for the lowest amounts shall be first allotted: *Provided further*, That any portion of any issue of said bonds not subscribed for as above provided may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds and certificates herein authorized is hereby appropriated out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same. [30 Stat. L. 467.]

See note to section 32, *supra*.

Sec. 3695. [*Cancellation of bonds redeemed or paid.*] All bonds applied to the sinking-fund, and all other United States bonds redeemed or paid by the United States, shall be canceled and destroyed. A detailed record of the bonds so canceled and destroyed shall be first made in the books of the Treasury Department. The amount of the bonds of each class that have been canceled and destroyed shall be deducted respectively from the amount of each class of the outstanding debt of the United States. [R. S.]

Act of July 14, 1870, ch. 256, 16 Stat. L. 273.

Sec. 3696. [*Addition to sinking-fund.*] In addition to other amounts that may be applied to the redemption or payment of the public debt, an amount equal to the interest on all bonds belonging to the sinking-fund shall be applied,

as the Secretary of the Treasury shall from time to time direct, to the payment of the public debt. [R. S.]

Act of July 14, 1870, ch. 256, 16 Stat. L. 273.

Sec. 3697. [*Redemption of six per cent. bonds.*] The Secretary of the Treasury is authorized, with any coin in the Treasury which he may lawfully apply to such purpose, or which may be derived from the sale of any of the bonds which he may be authorized to dispose of for that purpose, to pay at par and cancel any six per centum bonds of the United States of the kind known as five-twenty bonds, which have become or shall hereafter become redeemable by the terms of their issue. But the particular bonds so to be paid and canceled shall in all cases be indicated and specified by class, date, and number, in the order of their numbers and issue, beginning with the first numbered and issued, in a public notice to be given by the Secretary of the Treasury, and, in three months after the date of such public notice, the interest on the bonds so selected and advertised to be paid shall cease. [R. S.]

Act of July 14, 1870, ch. 256, 16 Stat. L. 273.

Nature of Act.—This is merely an Act providing for redemption in contradistinction from a payment. *Morgan v. U. S.*, (1885) 113 U. S. 476; *Stewart v. Henry County*, (1895) 66 Fed. Rep. 131.

Negotiability of bonds.—"The Acts of Congress under which these and similar bonds of the United States were authorized and issued, do not in terms attach to them the legal quality of negotiable securities; but they are such in form and fact and obviously for the purpose of giving them the highest credit and the widest and most unfettered currency by passing by delivery, with a title unimpeachable in the hands of *bona fide* purchasers for value." *Morgan v. U. S.*, (1885) 113 U. S. 476.

Legal effect of call for redemption.—"The bond becomes, after the maturity of a call for redemption, payable at the option of the holder on demand, but without future interest, at any time prior to the day fixed for ultimate payment, when it becomes unconditionally due. The construction which, after the maturity of such a call, reads the contract as if the day when interest is to cease had been originally inserted as the day of ultimate payment, confounds and obliterates the express distinction made in the law itself between redeemability and payability, and rewrites the contract upon a different basis. The legal effect of the call undoubtedly is to entitle the holder to demand payment at its maturity, and, even though not demanded, to exonerate the government from liability for interest accruing after that date; but, consistently with the terms of the statutes, and the obvious purposes in view in the original creation and issue of the securities in the form adopted, it cannot be that the legal effect of such a call for the purpose of redemption is the same as if the bond had been originally framed as an obligation to pay absolutely on a day previously fixed." *Morgan v. U. S.*, (1885) 113 U. S. 476, Rev. (1883) 18 Ct. Cl. 386.

Value of bonds on call for redemption.—

By calling in the five-twenty bonds for redemption they are made equal in value as money to par and interest then due. *Morgan v. U. S.*, (1885) 113 U. S. 476.

Effect of call on negotiability.—After a bill or note is due, it comes disgraced to the indorsee. No such presumption arises to affect the title of a holder of the bonds of the United States acquired by a *bona fide* purchaser for value prior to the date fixed in the bonds themselves for their ultimate payment; the only change in the original effect of the contract by the exercise of the right of earlier redemption is to stop the obligation to pay future interest. And as against one choosing for any purpose of his own to retain his bond as a continuing security for the value it always presents, having impressed upon it by the law of its creation the faculty of passing from hand to hand as money and therefore just as useful in the pursuits of trade and the exchanges of commerce and banking as so much money in the form of coin or bank notes, and more convenient because more portable, no such presumption can be entertained on the ground that its continued circulation is not in the due course of business, that it has fully performed all its intended functions and that it has been in any sense dishonored by a refusal on the part of the obligor to fulfil its obligation. *Morgan v. U. S.*, (1885) 113 U. S. 476, reversing (1883) 18 Ct. Cl. 386.

Effect of call on interest and maturity.—"That law gives to the holder three months after the date of the call for redemption within which to present his bonds for payment or exchange with interest to the date of redemption; but the only penalty it prescribes, if the holder chooses to retain his original security, is the loss of future interest. In no other respect does it alter the original contract. It seeks to impose upon it no other disability, nor take from it any other immunity. It stands, therefore, upon its statutory basis as a bond redeemable at the treasury on demand, without interest after the maturity of the call, payable according to its original terms and not overdue in the

commercial sense till after the day of unconditional payment." *Morgan v. U. S.*, (1885) 113 U. S. 476, *reversing* (1883) 18 Ct. Cl. 386.

Effect of stopping interest.—"The fact that interest was to cease to accrue three months after the date of call had no tendency to discredit the bonds or affect the title of a *bona fide* purchaser for value in the due course of trade." *Morgan v. U. S.*, (1885) 113 U. S. 476, *reversing* (1883) 18 Ct. Cl. 386.

How long bond may be held.—"Any holder had a right without prejudice, except as to loss of interest, to wait without demand for the whole period, at the expiration of which the bond was unconditionally payable." *Morgan v. U. S.*, (1885) 113 U. S. 476.

The method of giving such public notice by the department is by advertisement in newspapers selected by it." *Stewart v. Henry County*, (1895) 66 Fed. Rep. 131.

SEC. 2. [*Application of surplus moneys to redemption of bonds.*] That the Secretary of the Treasury may at any time apply the surplus money in the Treasury not otherwise appropriated, or so much thereof as he may consider proper, to the purchase or redemption of United States bonds: *Provided*, That the bonds so purchased or redeemed shall constitute no part of the sinking fund, but shall be canceled. * * * [21 Stat. L. 457.]

This is from the Sundry Civil Appropriation Act of March 3, 1881, ch. 133.

By whom made.—"The purchases are to be made by the secretary. He is to do this directly through the proper officers of the government and is not authorized by law to pay any commissions to private parties to purchase for the government. He is only authorized to apply the surplus money to the purchase of bonds and not to the payment of salaries or commissions." (1889) 19 Op. Att.-Gen. 279.

Amount to be purchased.—"The only express limitation to the exercise of the power to purchase conferred by this section is that the amount to be applied in the purchase or redemption of the bonds shall not at any time or in any event exceed the surplus in the treasury not otherwise appropriated. Within this maximum amount it confers on the secretary an official discretion to purchase or redeem from time to time whatever amounts may to him seem to be for the best interests of the United States." (1889) 19 Op. Att.-Gen. 279.

Cash purchases only.—"The power conferred by the statute does not extend to the making of contracts for future delivery, but is limited to actual cash purchases." (1889) 19 Op. Att.-Gen. 279.

Price to be paid.—Except when special and emergent general financial necessities demand relief, it is the intention of law that only the market price at the time of purchase should be paid, and no commissions in addition to the par value of the bond and the premium thereon can be lawfully paid. (1889) 19 Op. Att.-Gen. 279.

Discretion of secretary.—"The intent of the law is that the exercise of the discretion should generally be dependent upon the state of the market as a chief element. Keeping this in view, the discretion was not intended to be so rigorously limited as to prevent purchases even though the market price by reason of such purchases or other natural cause might rise, or even in special emergencies, when a general financial crisis could be avoided or stayed by a moderate advance above the then market values. But the policy of the government generally applicable in its purchases is to buy in a free and open market where all sellers of the commodity can readily compete and where the government can have the benefit of such competition. This policy should be recognized in the exercise of the power." (1889) 19 Op. Att.-Gen. 279.

SEC. 11. [*Three and a half per cent. bonds received in exchange for three per cent. registered bonds.*] That the Secretary of the Treasury is hereby authorized to receive at the Treasury any bonds of the United States bearing three and a half per centum interest, and to issue in exchange therefor an equal amount of registered bonds of the United States of the denominations of fifty, one hundred, five hundred, one thousand, and ten thousand dollars, of such form as he may prescribe, bearing interest at the rate of three per centum per annum, payable quarterly at the Treasury of the United States. Such bonds shall be exempt from all taxation by or under State authority, and be payable at the pleasure of the United States: *Provided*, That the bonds herein authorized shall not be called in and paid so long as any bonds of the

United States heretofore issued bearing a higher rate of interest than three per centum, and which shall be redeemable at the pleasure of the United States, shall be outstanding and uncalled. The last of the said bonds originally issued under this act, and their substitutes, shall be first called in, and this order of payment shall be followed until all shall have been paid. [22 Stat. L. 165.]

This is from the Act of July 12, 1882, ch. 290, "An Act to enable national-banking associations to extend their corporate exist-

ence, and for other purposes." For the other sections of the Act see NATIONAL BANKS, vol. 5, pp. 90, 93.

SEC. 11. [*Five, four, and three per cent. bonds received in exchange for two per cent. bonds.*] That the Secretary of the Treasury is hereby authorized to receive at the Treasury any of the outstanding bonds of the United States bearing interest at five per centum per annum, payable February first, nineteen hundred and four, and any bonds of the United States bearing interest at four per centum per annum, payable July first, nineteen hundred and seven, and any bonds of the United States bearing interest at three per centum per annum, payable August first, nineteen hundred and eight, and to issue in exchange therefor an equal amount of coupon or registered bonds of the United States in such form as he may prescribe, in denominations of fifty dollars or any multiple thereof, bearing interest at the rate of two per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That such outstanding bonds may be received in exchange at a valuation not greater than their present worth to yield an income of two and one-quarter per centum per annum; and in consideration of the reduction of interest effected, the Secretary of the Treasury is authorized to pay to the holders of the outstanding bonds surrendered for exchange, out of any money in the Treasury not otherwise appropriated, a sum not greater than the difference between their present worth, computed as aforesaid, and their par value, and the payments to be made hereunder shall be held to be payments on account of the sinking fund created by section thirty-six hundred and ninety-four of the Revised Statutes: *And provided further*, That the two per centum bonds to be issued under the provisions of this Act shall be issued at not less than par, and they shall be numbered consecutively in the order of their issue, and when payment is made the last numbers issued shall be first paid, and this order shall be followed until all the bonds are paid, and whenever any of the outstanding bonds are called for payment interest thereon shall cease three months after such call; and there is hereby appropriated out of any money in the Treasury not otherwise appropriated, to effect the exchanges of bonds provided for in this Act, a sum not exceeding one-fifteenth of one per centum of the face value of said bonds, to pay the expense of preparing and issuing the same and other expenses incident thereto. [31 Stat. L. 48.]

This is from the Act of March 14, 1900, ch. 41, "An Act to define and fix the standard of value, to maintain the parity of all forms of money issued or coined by the United States, to refund the public debt, and

for other purposes," for a full reference to which see COINAGE, MINTS, AND ASSAY OFFICES, vol. 2, p. 131.

R. S. sec. 3694 above mentioned, is given *supra*, p. 138.

Sec. 3698. [*Payment of interest.*] The Secretary of the Treasury shall cause to be paid, out of any money in the Treasury not otherwise appropriated,

any interest falling due, or accruing, on any portion of the public debt authorized by law. [R. S.]

Act of Feb. 9, 1847, ch. 7, 9 Stat. L. 123.

Sec. 3699. [*Anticipation of interest.*] The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he is authorized to dispose of any gold in the Treasury of the United States, not necessary for the payment of interest of the public debt. The obligation to create the sinking-fund shall not, however, be impaired thereby. [R. S.]

Res. No. 20 of March 17, 1864, 13 Stat. L. 404.

Extent of authority granted.—"The authority given by this section is full and ample to dispose of the gold not needed for the payment of interest on the public debt in any manner that the secretary of the treasury may deem most for the public interests. No limitation is prescribed as to notice to be given by him, or as to the amount which he

may sell, other than the one indicated." (1877) 15 Op. Atty.-Gen. 413.

Authority to fix price of gold.—The secretary of the treasury has authority under this section to fix a currency price for disposing of gold within a limited period, subject to his power at any time to terminate the period for which the limit was made or to change such price so as to conform to the market rate. (1877) 15 Op. Atty.-Gen. 413.

Sec. 3700. [*Purchase of coin.*] The Secretary of the Treasury may purchase coin with any of the bonds or notes of the United States, authorized by law, at such rates and upon such terms as he may deem most advantageous to the public interest. [R. S.]

Act of March 17, 1862, ch. 45, 12 Stat. L. 370.

Sec. 3701. [*Exemption from taxation.*] All stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. [R. S.]

Act of Feb. 25, 1862, ch. 33, 12 Stat. L. 346; Act of March 3, 1863, ch. 73, 12 Stat. L. 710; Act of March 3, 1864, ch. 17, 13 Stat. L. 13; Act of June 30, 1864, ch. 172, 13 Stat. L. 218; Act of Jan. 28, 1865, ch. 22, 13 Stat. L. 425; Act of March 3, 1865, ch. 77, 13 Stat. L. 469; Act of July 14, 1870, ch. 256, 16 Stat. L. 272.

Taxation of national bank notes and United States treasury notes, see Act of Aug. 13, 1864, ch. 281, title CURRENCY, vol. 2, p. 371.

"The principle of exemption is that the states cannot control the national government within the sphere of its constitutional powers—for there it is supreme—and cannot tax its obligations for payment of money issued for purposes within that range of powers, because such taxation necessarily implies the assertion of the right to exercise such control." *Banks v. New York*, (1868) 7 Wall. (U. S.) 16.

Nature of tax on government stock.—"The tax on government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution." *Weston v. Charleston*, (1829) 2 Pet. (U. S.) 449.

Constitutionality of state tax.—A state tax on the loans of the federal government is a restriction upon the constitutional powers of the United States to borrow money, and if the states had such a right, being in its

nature unlimited, it might be so used as to defeat the federal power altogether. *People v. Tax Com'rs*, (1862) 2 Black (U. S.) 620. See to same effect *Weston v. Charleston*, (1829) 2 Pet. (U. S.) 449.

A state law for that purpose is unconstitutional, whether it imposes the tax on United States stock *eo nomine*, or includes it in the aggregate of the taxpayer's property, to be valued, like the rest, at its worth. *People v. Tax Com'rs*, (1862) 2 Black (U. S.) 620.

The words "and other obligations" read in connection with the context "stocks, bonds, treasury notes" include only obligations of the government similar in character to those specifically named and given under the general power to borrow money on the credit of the United States, and to issue and return therefor obligations in any appropriate form, and they do not include checks given in payment of such obligations. *Hibernia Sav., etc., Soc. v. San Francisco*, (1903) 139 Cal. 206.

A tax laid by a state on banks, "on a valuation equal to the amount of their capital stock paid in, or secured to be paid in," is a tax on the property of the institution; and when that property consists of stocks of the federal government the law laying the tax is void. *Bank Tax Case*, (1864) 2 Wall. (U. S.) 200.

Bank capital invested in stocks of U. S.—That portion of its capital which a New York

bank has invested in the stocks, bonds, or other securities of the United States is not liable to taxation by the state. *People v. Tax Com'rs*, (1862) 2 Black (U. S.) 620.

Tax on stock of bank owning United States securities.—It is not a violation of this section to assess the shares of stock of a banking corporation, although the property of such corporation may consist partly of non-taxable United States securities. *Cleveland Trust Co. v. Lander*, (1902) 184 U. S. 111, *affirming* (1900) 62 Ohio St. 266.

A tax on stock of the United States held by an individual citizen of a state is a tax on the power to borrow money on the credit of the United States, and cannot be levied by or under the authority of a state consistently with the Constitution. *Weston v. Charleston*, (1829) 2 Pet. (U. S.) 449.

Checks or orders of the treasurer of the United States payable on demand are not within the reason and scope of the rule forbidding such taxation by the states as may tend to destroy the powers of the national government or impair their efficiency. *Hibernia Sav., etc., Soc. v. San Francisco*, (1903) 139 Cal. 206.

Notes under loan and currency acts of 1862-3.—In *State Bank v. New York County*, (1868) 7 Wall. (U. S.) 26, it was held, prior to the passage of this Act, that the United States notes issued under the Loan and Currency Acts of 1862 and 1863, intended to circulate as money and actually constituting with the national bank notes the ordinary circulating medium of the country, are the obligations of the national government and exempt from state taxation.

Certificates of indebtedness.—"We fail to perceive," said Chief Justice Chase, "either that there is a solid distinction between certificates of indebtedness issued for money borrowed and given to creditors and certificates of indebtedness issued directly to creditors in payment of their demands; or that such certificates, issued as a means of executing constitutional powers of the government other than of borrowing money, are not as much

beyond control and limitation by the states through taxation as bonds or other obligations issued for loans of money." *Banks v. New York*, (1868) 7 Wall. (U. S.) 16.

Certificates of debts for war supplies.—Certificates of indebtedness issued by the United States to creditors of the government for supplies furnished to it in carrying on the war for integrity of the Union, and by which the government promised to pay the sums of money specified in them with interest at a time named, are beyond the taxing power of the states. *Banks v. New York*, (1868) 7 Wall. (U. S.) 16.

The premium on, or excess above par value of, United States government bonds is not taxable by the state nor under any municipal or local authority. Such premium is only an incident of the bond and cannot exist apart therefrom. The exemption by statute is not based on the value of the bonds but on the bonds themselves. *R. I. Hospital Trust Co. v. Armington*, (1898) 21 R. I. 33.

Converting bank account into greenbacks to evade taxation.—There is no principle which forbids a state from taking a whole period of a business year already passed as the best means of ascertaining how much the taxpayer shall be required to pay on property which is admitted to be taxable, and how much he shall deduct for the non-taxable securities of the United States; therefore, when a state statute provides that upon a certain day the monthly average amount or value of the property or goods of taxpayers shall be ascertained as a basis for the assessment for taxation and includes the time of holding or controlling moneys, etc., invested in or converted into nontaxable securities, a taxpayer may not escape his liability for taxes by converting, a few days before the assessment, all moneys to his general account in the bank into greenbacks for the purpose of evading taxation, such greenbacks being shortly thereafter redeposited to his general account in the bank. *Shotwell v. Moore*, (1889) 129 U. S. 590, *affirming* (1888) 45 Ohio St. 632.

Sec. 3702. [Duplicate for bonds destroyed.] Whenever it appears to the Secretary of the Treasury, by clear and unequivocal proof, that any interest-bearing bond of the United States has, without bad faith upon the part of the owner, been destroyed, wholly or in part, or so defaced as to impair its value to the owner, and such bond is identified by number and description, the Secretary of the Treasury shall, under such regulations and with such restrictions as to time and retention for security or otherwise as he may prescribe, issue a duplicate thereof, having the same time to run, bearing like interest as the bond so proved to have been destroyed or defaced, and so marked as to show the original number of the bond destroyed and the date thereof. But when such destroyed or defaced bonds appear to have been of such a class or series as has been or may, before such application, be called in for redemption, instead of issuing duplicates thereof, they shall be paid, with such interest only as would have been paid if they had been presented in accordance with such call. [R. S.]

Act of June 1, 1872, ch. 254, 17 Stat. L. 196.

Practice prior to Act.—For a long time it

was the practice to pass special Acts of Congress authorizing the secretary of the treasury of the United States to issue, upon the

conditions prescribed in the Acts, duplicate United States bonds destroyed by fire or otherwise. Examples of such Acts are: Act Feb. 13, 1862 (12 Stat. 901); Act Jan. 19, 1861 (12 Stat. 878); Act March 28, 1864 (13 Stat. 577); Act July 23, 1866 (14 Stat. 599); Act April 25, 1866 (14 Stat. 584); Act March 1, 1869 (15 Stat. 464). Finally Congress passed a general law on the subject to cover all cases of the loss or destruction of the United States bonds, which is embodied in sec. 3702-3706, Rev. Stat. Without express authority to that effect conferred by an Act of Congress, the secretary of the treasury of the United States never presumed to issue duplicate United States bonds to take the place of bonds lost or destroyed, no matter how clear or satisfactory the proof of loss might be. *Farmers Nat. Bank v. Jones*, (1900) 105 Fed. Rep. 459.

The difference between sections 3702 and 3704 is that lost registered bonds are to be replaced by duplicates whether they have been called in for redemption or not. Section 3704 does not draw the distinction which appears in section 3702 and is based upon the circumstance that a lost bond has been called in. (1878) 15 Op. Atty.-Gen. 468.

Authority limited.—The language of the first clause limits the authority thereby conferred to the mere issuing of duplicate bonds in the cases mentioned. (1878) 15 Op. Atty.-Gen. 438.

The second clause is not more comprehensive than the other, but has precisely the same scope in respect to the subject-matter of relief, in other words, it extends solely to destroyed or defaced interest-bearing bonds. The mode of relief only is varied thereby in cases where such bonds are of a class or series already called in for redemption. (1878) 15 Op. Atty.-Gen. 438.

Statutory method only.—While the provisions of this section were enacted with a view to enable persons who may sustain loss by the destruction or damage of government securities to obtain relief without resorting

to Congress for special legislation, the authority conferred upon the secretary of the treasury by that section to afford relief must nevertheless be exercised in strict conformity with those provisions. He is not at liberty to give relief in the modes which do not fairly come within the terms of the statute. (1878) 15 Op. Atty.-Gen. 438.

When coupons are part of bond.—“So long as coupons remain attached to the bonds with which they were issued they must be deemed to constitute parts thereof; and, therefore, if one or more coupons, whilst attached to a bond of the above description, become destroyed or defaced, this would be a case of partial destruction or defacement of the bond and fall within the statute. But after the severance of the coupons from the bonds they can no longer be regarded as forming parts thereof. They then cease to be incidents even of the bonds and become, in fact, independent claims possessing the essential attributes of commercial paper.” (1878) 15 Op. Atty.-Gen. 438.

Detached coupons.—“Should coupons, after having been detached by the holder of the bonds, be transferred to another person, in whose hands they afterwards become destroyed or defaced, the latter would clearly have no right to any relief which the secretary is by the said clause authorized to give, since the authority of the secretary, except in cases falling within the second or last clause of section 3702, is confined to the issuing of duplicate bonds, which the detached coupons thus destroyed or defaced are not. * * * The result would be the same should such detached coupons not be transferred by the holder of the bonds, but become destroyed or defaced while both they and the bonds are still owned by him, as it is by the severance of the coupons from the bonds that the former cease to be parts of the latter, not by any change of ownership which may subsequently ensue.” (1878) 15 Op. Atty.-Gen. 438.

Sec. 3703. [*Indemnity for destroyed bond.*] The owner of such destroyed or defaced bond shall surrender the same, or so much thereof as may remain, and shall file in the Treasury a bond in a penal sum of double the amount of the destroyed or defaced bond, and the interest which would accrue thereon until the principal becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim upon such destroyed or defaced bond. [R. S.]

Act of June 1, 1872, ch. 254, 17 Stat. L. 196.

Sec. 3704. [*Duplicate of lost registered bond may be issued.*] Whenever it is proved to the Secretary of the Treasury, by clear and satisfactory evidence, that any duly registered bond of the United States, bearing interest, issued for valuable consideration in pursuance of law, has been lost or destroyed, so that the same is not held by any person as his own property, the Secretary shall issue a duplicate of such registered bond, of like amount, and bearing like interest and marked in the like manner as the bond so proved to be lost or destroyed. [R. S.]

Res. No. 49 of March 3, 1871, 16 Stat. L. 600.

The phrase "bearing interest" designates the class to which the paper must belong and

does not mean that interest is actually accruing at the time of application by the owner. (1878) 15 Op. Atty.-Gen. 468.

Sec. 3705. [*Indemnity for missing bond.*] The owner of such missing bond shall first file in the Treasury a bond in a penal sum equal to the amount of such missing bond, and the interest which would accrue thereon, until the principal thereof becomes due and payable, with two good and sufficient sureties, residents of the United States, to be approved by the Secretary of the Treasury, with condition to indemnify and save harmless the United States from any claim because of the lost or destroyed bond. [R. S.]

Res. No. 49 of March 3, 1871, 16 Stat. L. 600.

Where satisfactory proof is furnished that a registered bond called in for redemption has

been lost, payment thereof may be made upon a bond of indemnity being given by the owner in conformity with the requirements of this section. (1878) 15 Op. Atty.-Gen. 468.

Sec. 3706. [*Exchange of registered for coupon bonds.*] The Secretary of the Treasury is hereby authorized to issue, upon such terms and under such regulations as he may from time to time prescribe, registered bonds in exchange for and in lieu of any coupon-bonds which have been or may be lawfully issued; such registered bonds to be similar in all respects to the registered bonds issued under the acts authorizing the issue of the coupon-bonds offered for exchange. [R. S.]

Act of June 30, 1864, ch. 172, 13 Stat. L. 220.

Sec. 3707. [*Credit to officers for stolen notes.*] When any officer or agent duly authorized to receive, redeem, or cancel any Treasury notes issued by authority of law, shall receive, or pay, any Treasury note which has been previously received or redeemed by any officer or agent having authority to receive or redeem such note, and which has subsequently thereto been purloined and put into circulation, the Secretary of the Treasury, upon full and satisfactory proof that the same has been received or paid in good faith, and in the exercise of ordinary prudence, may allow a credit for the amount of such note, to the officer or agent so receiving or paying the same. [R. S.]

Act of Aug. 10, 1846, ch. 180, 9 Stat. L. 107.

Sec. 3708. [*Imitating United States securities, or printing business cards, etc., on them — penalty.*] It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use, any business or professional card, notice, placard, circular, handbill, or advertisement, in the likeness or similitude of any bond, certificate of indebtedness, certificate of deposit, coupon, United States note, Treasury note, fractional note, or other obligation or security of the United States which has been or may be issued under or authorized by any act of Congress heretofore passed or which may hereafter be passed; or to write, print, or otherwise impress upon any such instrument, obligation, or security, any business or professional card, notice, or advertisement, or any notice or advertisement of any matter or thing whatever. Any person violating this section shall be liable to a penalty of one hundred dollars, recoverable one-half to the use of the informer. [R. S.]

Act of Feb. 5, 1867, ch. 28, 14 Stat. L. 383. See also COUNTERFEITING AND FORGING, vol. 2, p. 297.

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And see generally *PUBLIC PRINTING*.

Secs. 497-511. [*Superseded.*]

These sections constituted chapter 7 (entitled "The Superintendent of Public Documents") of title 11 (entitled "The Department of the Interior") of the Revised Statutes. They were superseded by the provisions of the Act of Jan. 12, 1895, ch. 23, *infra*, p. 156.

These sections were as follows:

"Sec. 497. [*Custody and distribution of public documents.*] The Secretary of the Interior is charged with receiving, arranging, and safe-keeping for distribution, and of distributing to the persons entitled by law to receive the same, all printed journals of the two Houses of Congress, and all other books and documents of every nature whatever, already or hereafter directed by law to be printed or purchased for the use of the Government, except such as are directed to be printed or purchased for the particular use of Congress, or of either House thereof, or for the particular use of the Executive or of any of the Departments, and any person whose duty it shall be by law to deliver any of the same, shall deliver them at the rooms assigned by the Secretary of the Interior therefor." Act of Feb. 5, 1859, ch. 22, 11 Stat. L. 379, 380.

See Act of Jan. 12, 1895, ch. 23, sec. 64, *infra*, p. 161.

"Sec. 498. [*Statutes and reports of Supreme Court.*] See *STATUTES*."

"Sec. 499. [*Register of publications received.*] A register of all publications received at the Department of the Interior for safe-keeping and distribution shall be kept, under the direction of the Secretary, showing the quantity and kind at any time received by him; and he shall cause to be entered in such register, at the proper time, the time when, the place where, and the person to whom any of such publications have been distributed or delivered." Act of Feb. 5, 1859, ch. 22, 11 Stat. L. 380.

"Sec. 500. [*Manner of delivery.*] The publications received by the Secretary of the In-

terior for distribution shall be delivered out only on the written requisition of the heads of Departments, Secretary of the Senate, Clerk of the House of Representatives, Librarian of Congress, and other officers and persons who are by law authorized to receive the same, except where by law the Secretary of the Interior is required, without such requisition, to cause the same to be sent and delivered; and in either of such cases it shall be the duty of the Secretary of the Interior to cause the same to be sent and delivered, the expenses thereof, except when otherwise directed, to be charged on the contingent fund of the Department." Act of Feb. 5, 1859, ch. 22, 11 Stat. L. 380.

"Sec. 501. [*Distribution of copies of journals, books, etc.*] The copies of journals, books, and public documents which are or may be authorized to be distributed to incorporated bodies, institutions, and associations within the States and Territories, shall be distributed to such bodies as shall be designated to the Secretary of the Interior by each of the Senators from the several States respectively, and by the Representatives in Congress from each congressional district, and by the Delegate from each Territory. The distribution shall be made in such manner that the quantity distributed to each congressional district and Territory shall be equal; except that whenever the number of copies of any publication is insufficient to supply therewith one institution, upon the designation of each member of the Senate and House of Representatives, the copies at the disposal of the Secretary may be distributed to such incorporated colleges, public libraries, atheneums, literary and scientific institutions, boards of trade, or public associations, as he may select." Res. No. 5 of Jan. 28, 1857, 11 Stat. L. 253; Act of Feb. 5, 1859, ch. 22, 11 Stat. L. 380; Act of March 2, 1861, ch. 87, 12 Stat. L. 244.

"Sec. 502. [*Same subject.*] The selection of an institution to receive the documents or

dered to be published or procured at the first session of any Congress shall control the documents of the entire Congress, unless another designation be made before any distribution has taken place under the selection first made. Where the same work is printed by order both of the Senate and House of Representatives, the duplicates may be sent to different institutions, if so desired, by the member whose right it is to direct the distribution. And the public documents to be distributed by the Secretary of the Interior shall be sent to the institutions already designated, unless he shall be satisfied that any such institution is no longer a suitable depository of the same. Congressional journals and public documents, authorized to be distributed to institutions on the designation of members of Congress, shall be sent to such libraries and institutions only as shall signify a willingness to pay the cost of their transportation." Act of March 2, 1861, ch. 87, 12 Stat. L. 245.

Duplication provided against. See Act of Jan. 12, 1895, ch. 23, sec. 53, under PUBLIC PRINTING.

"SEC. 503. [*Distribution of journals of Senate and House.*] So many copies of the public journals of the Senate, and of the House of Representatives, shall be transmitted by the Secretary of the Interior to the executives of the several States and Territories, as shall be sufficient to furnish one copy to each executive, one copy to each branch of every State and territorial legislature, one copy to each university and college in each State, and one copy to the Historical Society incorporated, or which shall be incorporated, in each State. Fifty copies of the documents ordered by Congress to be printed shall be used for the purpose of exchange in foreign countries; the residue of the copies shall be deposited in the Library of the United States, subject to the future disposition of Congress." Res. of Dec. 27, 1813, No. 1, 3 Stat. L. 140; Res. of July 20, 1840, No. 5, 5 Stat. L. 409.

"SEC. 504. [*Distribution to legations and consulates.*] Only such of the books published by the Government, and usually known by the name of 'public documents,' shall hereafter be supplied to any legation or consulate of the United States as are first designated by the Secretary of State, by an order to be recorded in the State Department, as suitable for and required by such legation and consulate." Act of May 22, 1872, ch. 194, 17 Stat. L. 144.

"SEC. 505. [*Distribution of surplus volumes, etc.*] Whenever there are in the custody of the Department of the Interior any sets of the documents of any session of Congress, or other documents or odd volumes, not necessary to supply deficiencies or losses that may happen in the Library of Congress, or in that of either of the Executive Departments, or in State or territorial libraries, the Secretary of the Interior shall distribute the same as equally as practicable to the several Senators, Representatives, and Delegates in Congress, for distribution to public libraries and other literary institutions in their re-

spective districts." Res. of Feb. 17, 1871, No. 36, 16 Stat. L. 597.

"SEC. 506. [*Books, etc., not to be removed from proper offices.*] All such books and documents, when received at the proper offices, libraries, and other depositories, as provided by law, shall be kept there and not removed from such places." Act of Feb. 5, 1859, ch. 22, 11 Stat. L. 381.

"SEC. 507. [*Superintendent of public documents.*] There shall be in the Department of the Interior a superintendent of public documents, who shall be appointed by the Secretary, and shall be entitled to receive a salary of twenty-five hundred dollars a year." Act of March 3, 1869, ch. 121, 15 Stat. L. 292.

This section was amended by Act of June 19, 1878, ch. 329, 20 Stat. L. 198, by changing the salary to \$1,900. It is superseded by Act of Jan. 12, 1895, ch. 23, sec. 61, *infra*, p. 159.

"SEC. 508. [*Duties of the superintendent of public documents.*] The superintendent of public documents shall be charged, subject to the general direction of the Secretary of the Interior, with the duty of collecting, arranging, preserving, packing, and distributing the publications received at the Department of the Interior for distribution; and with the duty of compiling and supervising the Biennial Register." Act of March 3, 1869, ch. 121, 15 Stat. L. 283, 292.

"SEC. 509. [*Rooms for public documents.*] Suitable rooms in the Department of the Interior shall be from time to time assigned by the Secretary for the journals, books, and documents." Act of March 3, 1869, ch. 121, 15 Stat. L. 283, 292.

"SEC. 510. [*Preparation of biennial register.*] As soon as practicable after the last day of September in each year in which a new Congress is to assemble, a register shall be compiled and printed under the direction of the Secretary of the Interior, of which seven hundred and fifty copies shall be published, and which shall contain the following lists, made up to such last day of September:

"1. Correct lists of all the officers, clerks, employés, and agents, civil, military, and naval, in the service of the United States, including cadets and midshipmen, which lists shall exhibit the amount of compensation, pay, and emoluments allowed to each, the State or country in which he was born, the State or Territory from which he was appointed to office, and where employed.

"2. A list of the names, force, and condition of all the ships and vessels belonging to the United States, and when and where built.

"3. Lists of all printers of the laws of the United States, and of all printers employed by Congress or by any Department or officer of the Government, during the two years preceding the last day of September up to which such list is required to be made, with the compensation allowed to each, and designating the Department or officer causing the printing to be executed.

"4. A statement of all allowances made by the Postmaster-General, within the same period of two years, to each contractor on contracts for carrying the mail, discriminat-

ing the sum paid as stipulated by the original contract and the sums paid as additional allowance." Res. of April 27, 1816, No. 6, 3 Stat. L. 342; Res. of July 14, 1832, No. 11, 4 Stat. L. 608; Act of March 3, 1851, ch. 32, 9 Stat. L. 600; Act of March 6, 1861, ch. 87, 12 Stat. L. 245.

This subject is now covered by section 73 of the Act of Jan. 12, 1895, ch. 23, *infra*, p. 162, and by section 43 of that Act given under the title PUBLIC PRINTING.

"SEC. 511. [*Distribution of biennial register.*] On the first Monday in January, in each year when a new Congress is assembled, there shall be delivered to the President, the

Vice-President each head of a Department, each member of the Senate and House of Representatives, one copy of the Biennial Register; to the Secretary of the Senate and the Clerk of the House of Representatives, ten copies each, for the use of the respective Houses; to the Library of Congress, twenty-five copies; and to the secretary of state of each State, one copy; and the residue of the copies shall be disposed of as Congress shall, from time to time, direct." Res. of April 27, 1816, No. 6, 3 Stat. L. 342; Act of March 3, 1851, ch. 32, 9 Stat. L. 600.

See paragraph following section 510, *supra*.

Sec. 198. [*Biennial lists of employees to be filed in Interior Department.*] [*Superseded.*]

This section was as follows:

"SEC. 198. The head of each Department shall, as soon as practicable after the last day in September in each year in which a new Congress is to assemble, cause to be filed in the Department of the Interior a full and complete list of all officers, agents, clerks, and employes employed in his Department, or in any of the offices or Bureaus connected

therewith. He shall include in such list all the statistics peculiar to his Department required to enable the Secretary of the Interior to prepare the Biennial Register." Res. of April 27, 1816, No. 6, 3 Stat. L. 342; Act of March 3, 1851, ch. 32, 9 Stat. L. 600; Res. of July 14, 1832, No. 11, 4 Stat. L. 608.

It was superseded by the Act of Jan. 12, 1895, ch. 23, sec. 73, *infra*, p. 162.

Sec. 227. [*Surplus maps and publications of signal office of War Department.*] The Chief Signal-Officer may cause to be sold any surplus maps or publications of the Signal-Office, the money received therefor to be applied toward defraying the expenses of the signal-service; and an account of the same shall be rendered in each annual report of the Chief of the Signal-Service. [R. S.]

Act of March 3, 1873, ch. 227, 17 Stat. L. 527.

Sec. 386. [*Distribution of statutes and reports to judges.*] The Department of Justice shall be charged with the distribution to the various judges and courts of the statutes, reports, and other judicial documents provided by law. [R. S.]

Act of March 3, 1873, ch. 238, 17 Stat. L. 578.

See for further provisions, titles REPORTS (LAW); STATUTES.

Repeal in part.—See Act of Feb. 12, 1889, ch. 135, sec. 2, under the title REPORTS (LAW).

Sec. 387. [*Register of statutes and reports distributed.*] A register of the statutes of the United States and reports of the Supreme Court shall be kept, under the authority of the head of the Department of Justice, showing the quantity of each kind received by him from the Secretary of the Interior; and it shall be his duty to cause to be entered in such register, and at the proper time, when, where, and to whom the same, or any part of them, have been distributed and delivered, and to report the same to Congress in his annual report. [R. S.]

Act of March 3, 1873, ch. 238, 17 Stat. L. 578.

For further provisions on this subject, see REPORTS; STATUTES.

Sec. 1332. [*Congressional documents to library of military academy.*] The Secretary of the Senate shall furnish annually to the library of the Academy one copy of each document published, during the preceding year, by the Senate. [R. S.]

Act of April 23, 1856, ch. 19, 11 Stat. L. 5.

See further Act of Jan. 12, 1895, ch. 23, sec. 98, *infra*, p. 175, making the library of

the academy a designated depository of government publications.

Secs. 3791–3793. [Superseded.]

These sections were superseded by the Act of Jan. 12, 1895, ch. 23. They are set forth below with a note as to the superseding section.

"SEC. 3791. [*Bills and joint resolutions.*] There shall be printed seven hundred and fifty copies of every bill or joint resolution ordered by either House of Congress, or required by any rule thereof to be printed, unless a different number shall be specifically ordered." Res. of Feb. 3, 1864, No. 11, 13 Stat. L. 402.

This section was superseded by Act of Jan. 12, 1895, ch. 23, sec. 55, *infra*, p. 158.

"SEC. 3792. [*Documents, usual number.*] Fifteen hundred and fifty copies of any document ordered by Congress shall be printed,

and that number shall be known as the usual number. No greater number shall be printed unless ordered by either House, or as hereinafter provided." Act of March 3, 1859, ch. 80, 11 Stat. L. 422; Res. of July 25, 1868, No. 72, 15 Stat. L. 260.

This section was superseded by Act of Jan. 12, 1895, ch. 23, sec. 54, *infra*, p. 157.

"SEC. 3793. [*Extra copies, motion to print.*] All motions to print extra copies of any bill, report, or other public document, shall be referred to the Committee on Printing of the House in which such motion is made." Act of Aug. 26, 1852, ch. 91, 10 Stat. L. 35.

This section was superseded by Act of Jan. 12, 1895, ch. 23, sec. 59, *infra*, p. 159.

Sec. 3794. [*Notice of order to print.*] The House first ordering a document to be printed shall immediately notify the other House of such order. [R. S.]

Act of March 3, 1859, ch. 80, 11 Stat. L. 422.

Sec. 3795. [*Extra copies costing more than five hundred dollars.*] [Superseded.]

This section was as follows:

"SEC. 3795. All propositions in either House of Congress for printing extra copies of documents, the cost of which exceeds five hundred dollars, shall be by concurrent resolution, which shall, upon its transmission

from either House, be immediately referred to the Committee on Printing of the House to which it is sent." Act of July 12, 1870, ch. 251, 16 Stat. L. 230.

This section was superseded by Act of Jan. 12, 1895, ch. 23, sec. 59, *infra*, p. 159.

Sec. 3796. [*Extra copies for the Library of Congress.*] The Congressional Printer shall, when so directed by the Joint Committee on the Library, print, in addition to the usual number, either fifty or one hundred copies, as he may be directed, of all documents printed by order of either House of Congress, or of any Department or Bureau of the Government. [R. S.]

Res. of July 25, 1868, No. 72, 15 Stat. L. 260.

See further Act of Jan. 12, 1895, ch. 23,

secs. 57, 73, *infra*, pp. 158, 162, and Res. of March 2, 1901, No. 16, *infra*, p. 184, and notes thereunder.

Sec. 3798. [*Number of copies of certain documents to be printed and bound.*] [Superseded.]

This section was as follows:

"SEC. 3798. Of the documents named in this section there shall be printed and bound, in addition to the usual number for Congress, the following numbers of copies, namely:

"First. Of the documents accompanying the annual reports of the Executive Departments, one thousand copies for the use of the members of the Senate, and two thousand copies for the use of the members of the House of Representatives." Act of June 25, 1864, ch. 155, 13 Stat. L. 184.

"Second. Of the President's message, the annual reports of the Executive Departments, and the abridgment of accompanying documents, unless otherwise ordered by either House, ten thousand copies for the use of the members of the Senate, and twenty-five thousand copies for the use of the members of the House of Representatives." Act of June 25, 1864, ch. 155, 13 Stat. L. 185.

"Third. Of papers relating to foreign affairs, accompanying the annual message of the President, two thousand copies for the use of the members of the Senate and four thousand copies for the use of the members of the House of Representatives." Act of July 27, 1866, ch. 287, 14 Stat. L. 305.

"Fourth. Of the 'Commercial Relations,' annually prepared under the directions of the State Department, two thousand copies for the use of the members of the Senate, and three thousand copies for the use of the members of the House of Representatives." Act of June 25, 1864, ch. 154, 13 Stat. L. 185.

"Fifth. Of the annual report on the statistics of commerce and navigation, exports and imports, merchandise in transit, manufactures, and registered and enrolled vessels, prepared by the Chief of the Bureau of Statistics, two thousand copies for the use of the members of the Senate, and six thousand one hundred

and fifty copies for the use of the members of the House of Representatives." Res. of March 3, 1863, No. 27, 12 Stat. L. 826.

The words "Chief of the Bureau of Statistics" were inserted in place of the words "Special Commissioner of the Revenue," by Act of Feb. 18, 1875, ch. 80, 18 Stat. L. 319.

"Sixth. Of the public journals of the

Senate and of the House of Representatives, fifteen hundred and fifty copies." Res. of Dec. 27, 1813, No. 1, 3 Stat. L. 140; Res. of April 30, 1844, No. 5, 5 Stat. L. 717; Res. of Jan. 28, 1857, No. 5, 11 Stat. L. 253.

This section was superseded by the provisions of Act of Jan. 12, 1895, ch. 23, sec. 73, *infra*, p. 162.

Sec. 3799. [*Documents for foreign exchange.*] Of the documents printed by order of either House, there shall be printed and bound fifty additional copies for the purpose of exchange in foreign countries. [*R. S.*]

Res. of July 20, 1840, No. 5, 5 Stat. L. 409. But see Act of Jan. 12, 1895, ch. 23, sec.

73, and Res. of March 2, 1901, No. 16, *infra*, pp. 162, 184.

Secs. 3800, 3801. [*Superseded.*]

These sections were as follows:

"SEC. 3800. [*Biennial Register.*] Of the Biennial Register, compiled under the direction of the Secretary of the Interior, there shall be printed and bound seven hundred and fifty copies." Res. of April 27, 1816, No. 6, 3 Stat. L. 342; Act of March 2, 1861, ch. 87, 12 Stat. L. 245.

This section is superseded by Act of Jan. 12, 1895, ch. 23, sec. 73, *infra*, p. 162.

"SEC. 3801. [*Congressional Directory.*] The first edition of the Congressional Directory for each session shall be printed and ready for distribution within one week after the commencement thereof." Res. of Feb. 14, 1865 No. 15, 13 Stat. L. 568.

This section is superseded by Act of Jan. 12, 1895, ch. 23, sec. 73, *infra*, p. 162.

Sec. 3809. [*Superseded.*]

This section was as follows:

"SEC. 3809. [*Extra copies of any document, how sold.*] If any person desiring extra copies of any document printed at the Government Printing Office by authority of law shall, previous to its being put to press, notify the Congressional Printer of the number of copies wanted, and shall pay to him, in advance, the

estimated cost thereof, and ten per centum thereon, the Congressional Printer may, under the direction of the Joint Committee on Public Printing, furnish the same." Act of June 25, 1864, ch. 155, 13 Stat. L. 186; Act of March 3, 1871, ch. 113, 16 Stat. L. 478.

This section is superseded by Act of Jan. 12, 1895, ch. 23, sec. 42, *infra*, p. 156.

Sec. 4691. [*Superseded.*]

This section was as follows:

"SEC. 4691. [*Disposal of maps and charts.*] The Secretary of the Treasury is authorized to dispose of the maps and charts of the survey of the coast of the United States at such prices and under such regulations as may from time to time be fixed by him; and a number of copies of each sheet, not to ex-

ceed three hundred, shall be distributed among foreign governments, and Departments of our own Government, and literary and scientific associations as may be designated by the Secretary of the Treasury." Act of June 3, 1844, ch. 37, 5 Stat. L. 660.

This section was superseded by the Act of Jan. 12, 1895, ch. 23, sec. 76, *infra*, p. 173.

Sec. 4837. [*Documents to be furnished homes for disabled volunteers, including state homes, etc.*] That the Secretary of the Senate and the Clerk of the House of Representatives shall cause to be sent to the National Home for Disabled Volunteer Soldiers at Dayton, Ohio, and to the branches at Togus in Maine, Milwaukee in Wisconsin, Hampton in Virginia, Marion in Indiana, Leavenworth in Kansas, Santa Monica in California, and to the homes for the widows and orphans of soldiers and sailors established and maintained by any State or Territory, and all soldiers' and sailors' homes established by the authority of any State or Territory receiving aid from the United States under legislation of Congress, each, one copy each of the following documents: The session laws of Congress; the annual messages of the President, with accompanying documents in the abridgment thereof; the daily Congressional Record; and the Public Printer is hereby authorized and directed to furnish to the

Secretary of the Senate and the Clerk of the House of Representatives the documents referred to in this section. [R. S.]

This section was amended to read as above by its repeal and re-enactment by Act of July 26, 1894, ch. 168, 28 Stat. L. 159. Originally it read as follows:

"SEC. 4837. [*Documents to be furnished to certain homes.*] The Secretary of the Senate and the Clerk of the House of Representatives shall cause to be sent to the National Home for Disabled Volunteer Soldiers, at Dayton in Ohio, and to the branches at Augusta in Maine, and Milwaukee in Wisconsin, at Hampton, Virginia, and the Soldiers' Home at Knightstown Springs, near Knightstown in Indiana, each, one copy of each of the following documents: The Journals of each House of Congress at each and every session; all laws of Congress; the annual messages of the President, with accompanying documents; and all other documents or books which may be printed and bound by order of either House of Congress, including the Congressional Record." Res. of June 8, 1868, No. 32, 15 Stat. L. 253; Act of Jan. 23, 1873, ch. 51, 17 Stat. L. 417.

It was "repealed and re-enacted" by Act of Feb. 8, 1881, ch. 35, 21 Stat. L. 322, to read as follows:

"The Secretary of the Senate and the Clerk of the House of Representatives shall cause to be sent to the National Home for Disabled Volunteer Soldiers at Dayton, in Ohio, and to the branches at Augusta, in Maine, Milwaukee, in Wisconsin, Hampton, in Virginia, and the Soldiers' Home at Knightstown Springs, near Knightstown, in Indiana, each, one copy of each of the following documents: The journals of each House of Congress at each and every session; all laws of Congress; the annual messages of the President, with accompanying documents; the daily Congressional Record, and all other documents or books which may be printed and bound by order of either House of Congress; and the Public Printer is hereby authorized and directed to furnish to the Secretary of the Senate and the Clerk of the House of Representatives the documents referred to in this section."

It was again repealed and re-enacted as stated above to read as given in the text.

Distribution of Congressional Record to soldiers' and sailors' homes is now provided for by Act of Jan. 12, 1895, ch. 23, sec. 73, *infra*, p. 162.

SEC. 24. [*Congressional Record to be furnished to members of Congress and to committees.*] There shall be reserved by the Public Printer from the quota of each member of Congress and Delegate one copy of the Congressional Record in unstitched form, to be delivered to each member or Delegate; and there shall be furnished to each standing committee of Congress one copy, which copies for members and committees shall be bound promptly in paper when each semimonthly index shall be issued and shall be delivered without delay. [28 Stat. L. 604.]

This and the following secs. 40, 42, 54-79, 92, 95, 98 are from the Act of Jan. 12, 1895, ch. 23, entitled "An act providing for the

public printing and binding and the distribution of public documents." A full reference to this Act is given under PUBLIC PRINTING.

SEC. 40. [*Congressional Directory and Record — printing for sale — proceeds of sale.*] The Public Printer, under the direction of the Joint Committee, may print for sale, at a price sufficient to reimburse the expense of such printing, the current Congressional Directory and the current numbers and bound sets of the Congressional Record. The money derived from such sales shall be paid into the Treasury and accounted for in his annual report to Congress, and no sales shall be made on credit. [28 Stat. L. 607.]

See note to section 24, *supra*.

SEC. 42. [*Extra copies of documents.*] The Public Printer shall furnish to all applicants giving notice before the matter is put to press, not exceeding two hundred and fifty to any one applicant, copies of bills, reports, and documents, said applicants paying in advance the cost of such printing with ten per centum added: *Provided*, That the printing of such work for private parties shall not interfere with the printing for the Government. [28 Stat. L. 607.]

See note to section 24, *supra*.

This section superseded Res. of May 8, 1880, No. 31, "Joint resolution authorizing the Public Printer to print additional copies of bills and other public documents," as follows:

"That the Public Printer be and he is hereby directed to furnish to all applicants copies of bills and reports and other public

documents hereafter printed by order of Congress and distributed from the Document Rooms of the Senate and House on said applicants paying the cost of such printing with ten per centum added, and giving the notice required by section thirty-eight hundred and nine of Title forty-five of the Revised Statutes." [21 Stat. L. 306.]

SEC. 54. [*Documents and reports — "usual number" — style and distribution — reserved sets.*] Whenever any document or report shall be ordered printed by Congress, such order to print shall signify the "usual number" of copies for binding and distribution among those entitled to receive them. No greater number shall be printed unless ordered by either House, or as hereinafter provided. When a special number of a document or report is ordered printed, the usual number shall also be printed, unless already ordered. The usual number of documents and reports shall be one thousand six hundred and eighty-two copies, which shall be distributed as follows:

OF THE HOUSE DOCUMENTS AND REPORTS, UNBOUND. — To the Senate document room, one hundred and fifty copies; to the office of the Secretary of the Senate, ten copies; to the House document room, four hundred and twenty copies; to the Clerk's office of the House, twenty copies.

OF THE SENATE DOCUMENTS AND REPORTS, UNBOUND. — To the Senate document room, two hundred and twenty copies; office of the Secretary of the Senate, ten copies; to the House document room, three hundred and sixty copies; to the Clerk's office of the House, ten copies.

That of the number printed, the Public Printer shall bind one thousand and eighty-two copies, which shall be distributed as follows:

OF THE HOUSE DOCUMENTS AND REPORTS, BOUND. — To the Senate Library, fifteen copies; to the Library of Congress, two copies, and fifty additional copies for foreign exchanges; to the House Library, fifteen copies; to the superintendent of documents, five hundred copies, for distribution to the State and Territorial libraries and designated depositories.

OF THE SENATE DOCUMENTS AND REPORTS, BOUND. — To the Senate Library, fifteen copies; to the Library of Congress, two copies, and fifty copies additional for foreign exchanges; to House Library, fifteen copies; to the superintendent of documents, five hundred copies, for distribution to State and Territorial libraries and designated depositories.

These documents shall be bound in full sheep, and in binding documents the Public Printer shall give precedence to those that are to be distributed to libraries and to designated depositories: *Provided*, That any State or Territorial library or designated depository entitled to documents that may prefer to have its documents in unbound form, may do so by notifying the superintendent of documents to that effect prior to the convening of each Congress.

The remainder of said documents and reports shall be reserved by the Public Printer in unstitched form, and shall be held subject to be bound in the number provided by law, upon orders from the Vice-President, Senators, Representatives, Delegates, Secretary of the Senate, and Clerk of the House, in such binding as they shall select, except full morocco or calf; and when not called for and delivered within two years after printing shall be delivered in unbound form to the superintendent of documents for distribution. All of the "usual number" shall be printed at one time. [28 Stat. L. 608.]

See note to section 24, *supra*.

This section supersedes the provisions of Res. of July 7, 1882, No. 43, "Joint resolution to provide for the printing of public docu-

ments for binding and distribution to those entitled to receive them," as follows:

"That whenever any document or report shall be ordered printed by Congress, there

shall be printed, in addition to the number in each case stated, the 'usual number' of copies for binding and distribution among those entitled to receive them; and this shall apply to all unexecuted orders now in the office of the Public Printer." [22 Stat. L. 387.]

Binding and distribution of reserved sets. — See amendment, Res. of June 30, 1902, No. 36, *infra*, p. 175.

To what documents applicable. — Prior to the passage of this Act, it was held by Acting Attorney-General S. F. Phillips, in (1884) 18 Op. Atty.-Gen. 51, that the word "document" in the resolution of July 7, 1882, had a general application to everything that was a document, no matter by what kind of legislation ordered, so that such legislation did not forbid the printing of the "usual number" of the document on which it operated.

Number authorized under general order to print. — Under this section a general order

to print a document or report, not stating the number of copies, authorizes the printing of the "usual number" of 1,682 copies. (1903) 24 Op. Atty.-Gen. 663.

Order for stated number of copies. — Where Congress directs the printing of a stated number of copies this carries with it the order to print the "usual number," or 1,682 copies, in addition, unless the usual number has been already ordered. (1903) 24 Op. Atty.-Gen. 663.

Documents in addition to the usual number. — "In case any other number were expressly ordered to be printed for a different destination, a reasonable construction would hold such other number to be additional to the 'usual number,' to wit, so many under the special order for one purpose and so many more under the general provisions of sec. 3792 or any amendment thereof, for another and standing purpose." (1884) 18 Op. Atty.-Gen. 51.

SEC. 55. [Bills and resolutions — number and distribution — private bills defined.] There shall be printed of each Senate and House public bill and joint, concurrent, and simple resolution six hundred and twenty-five copies, which shall be distributed as follows: To Senate document room, two hundred and twenty-five copies; office of Secretary of Senate, fifteen copies; House document room, three hundred and eighty-five copies. There shall be printed of each Senate and House private bill two hundred and fifty copies, which shall be distributed as follows: To Senate document room, one hundred and thirty-five copies; to Secretary of Senate, fifteen copies; House document room, one hundred copies. The term private bill shall be construed to mean all bills for the relief of private parties, bills granting pensions, and bills removing political disabilities. All bills and resolutions shall be printed in bill form and unless specially ordered by either House shall only be printed when referred to a committee, when favorably reported back, and after their passage by either House. [28 Stat. L. 609.]

See note to section 24, *supra*.

SEC. 56. [Laws, postal conventions, and treaties — number and distribution.] There shall be printed in slip form one thousand eight hundred and ten copies of public and four hundred and sixty of private laws, postal conventions, and treaties, which shall be distributed as follows: To the House document room, one thousand copies of public and one hundred copies of private laws; to the Senate document room, five hundred and fifty copies of public and one hundred copies of private laws; to the Department of State, five hundred copies of all laws; and to the Treasury Department, sixty of all laws. Postal conventions and treaties shall be distributed as private laws. [28 Stat. L. 609.]

See note to section 24, *supra*.

Number of copies of private laws authorized. — Under the provisions of this section, the public printer should print in slip form

and distribute 760 copies of private laws, postal conventions, and treaties. (1896) 21 Op. Atty.-Gen. 405.

SEC. 57. [Journals of Congress — number and distribution.] There shall be printed of the Journals of the Senate and House of Representatives seven hundred and twenty copies, which shall be distributed as follows: To the Senate document room, ninety copies for distribution to Senators, and twenty-five additional copies; to the Senate Library, ten copies; to the House document

room, three hundred and sixty copies for distribution to members, and twenty-five additional copies; to the Department of State, four copies; to the superintendent of documents, one hundred and forty-four copies to be distributed to three libraries in each of the States and Territories to be designated by the superintendent of documents; to the Library of Congress, twenty-five copies; to the Court of Claims, two copies, and to the Library of the House of Representatives, ten copies. The remaining number of the Journals of the Senate and House of Representatives, consisting of twenty-five copies, shall be furnished to the Secretary of the Senate and the Clerk of the House of Representatives, respectively, as the necessities of their respective offices may require, as rapidly as signatures are completed for such distribution. [28 Stat. L. 609.]

See note to section 24, *supra*.
This section superseded Act of Oct. 19, 1888, ch. 1213, 25 Stat. L. 610, which pro-

vided for the printing of 1,055 copies of the Senate Journals and 1,174 copies of the House Journals, and the distribution of the same.

SEC. 58. [*Departmental, etc., publications — distribution.*] Whenever printing not bearing a Congressional number shall be done for any department or officer of the Government, except confidential matter, blank forms, and circular letters not of a public character, or shall be done for use of Congressional committees, not of a confidential character, two copies shall be sent, unless withheld by order of the committee, by the Public Printer to the Senate and House Libraries, respectively, and one copy each to the document rooms of the Senate and House, for reference; and these copies shall not be removed; and of all publications of the Executive Departments not intended for their especial use, but made for distribution, five hundred copies shall be at once delivered to the superintendent of documents for distribution to designated depositories and State and Territorial libraries. [28 Stat. L. 610.]

See note to section 24, *supra*.

SEC. 59. [*Resolutions for printing extra copies.*] Orders for printing extra copies shall be by simple, concurrent, or joint resolution. Either House may print extra copies to the amount of five hundred dollars by simple resolution; if the cost exceeds that sum, the printing shall be ordered by concurrent resolution, except when the resolution is self-appropriating, when it shall be by joint resolution. Such resolutions, when presented to either House, shall be referred immediately to the Committee on Printing, who, in making their report, shall give the probable cost of the proposed printing upon the estimate of the Public Printer; and no extra copies shall be printed before such committee has reported. [28 Stat. L. 610.]

See note to section 24, *supra*.

SEC. 60. [*Document rooms, Senate and House — superintendent, etc., how appointed.* See CONGRESS, vol. 2, p. 229.]

SEC. 61. [*Superintendent of documents — sale of documents — accounts and reports — custody of documents.*] The Public Printer shall appoint a competent person to act as superintendent of documents, and shall fix his salary. The superintendent of documents so designated and appointed is hereby authorized to sell at cost any public document in his charge, the distribution of which is not herein specifically directed, said cost to be estimated by the Public Printer and based upon printing from stereotyped plates; but only one copy of any document shall be sold to the same person, excepting libraries or schools by which additional copies are desired for separate departments thereof, and members of Congress; and whenever any officer of the Government having in his

charge documents published for sale shall desire to be relieved of the same, he is hereby authorized to turn them over to the superintendent of documents, who shall receive and sell them under the provisions of this section. All moneys received from the sale of documents shall be returned to the Public Printer on the first day of each month and be by him covered into the Treasury monthly, and the superintendent of documents shall report annually the number of copies of each and every document sold by him, and the price of the same. He shall also report monthly to the Public Printer the number of documents received by him and the disposition made of the same. He shall have general supervision of the distribution of all public documents, and to his custody shall be committed all documents subject to distribution, excepting those printed for the special official use of the Executive Departments, which shall be delivered to said Departments, and those printed for the use of the two Houses of Congress, which shall be delivered to the folding rooms of said Houses and distributed or delivered ready for distribution to Members and Delegates upon their order by the superintendents of the folding rooms of the Senate and House of Representatives. [28 Stat. L. 610.]

See note to section 24, *supra*.
As to statutes, see STATUTES.

SEC. 62. [*Index of documents, how made, number and distribution.*] The superintendent of documents shall, at the close of each regular session of Congress, prepare and publish a comprehensive index of public documents, beginning with the Fifty-third Congress, upon such plan as shall be approved by the Joint Committee on Printing; and the Public Printer shall, immediately upon its publication, deliver to him a copy of each and every document printed by the Government Printing Office; and the head of each of the Executive Departments, bureaus, and offices of the Government shall deliver to him a copy of each and every document issued or published by such Department, bureau, or office not confidential in its character. He shall also prepare and print in one volume a consolidated index of Congressional documents, and shall index such single volumes of documents as the Joint Committee on Printing shall direct. Of the comprehensive index and of the consolidated index two thousand copies each shall be printed and bound in addition to the usual number, two hundred copies for the use of the Senate, eight hundred copies for the use of the House, and one thousand copies for distribution by the superintendent of documents. [28 Stat. L. 610.]

See note to section 24, *supra*.

SEC. 63. [*Disposal of documents on hand at the Capitol.*] The Secretary and Sergeant-at-Arms of the Senate and the Clerk and Doorkeeper of the House of Representatives shall cause an invoice to be made of all public documents stored in and about the Capitol, other than those belonging to the quota of members of the present Congress, to the Library of Congress and the Senate and House Libraries and document rooms, and all such documents shall by the superintendents, respectively, of the Senate and House folding rooms be put to the credit of Senators, Representatives, and Delegates of the present Congress, in quantities equal in the number of volumes and as nearly as possible in value, to each member of Congress, and said documents shall be distributed upon the orders of Senators, Representatives, and Delegates, each of whom shall be supplied by the superintendents of the folding rooms with a list of the number and character of the publications thus put to his credit: *Provided*, That before said apportionment is made copies of any of these documents

desired for the use of committees of the Senate or House shall be delivered to the chairmen of such committees: *And provided further*, That four copies of each and all leather-bound documents shall be reserved and carefully stored, to be used hereafter in supplying deficiencies in the Senate and House Libraries caused by wear or loss, and a similar invoice shall be prepared and distribution made as above provided at the convening in regular session of each successive Congress. [28 Stat. L. 611.]

See note to section 24, *supra*.

SEC. 64. [*Office of superintendent of documents in Interior Department abolished — eleventh census distribution.*] Upon the appointment of the superintendent of documents, as hereinbefore provided, the office of the superintendent of documents in the Department of the Interior shall be, and is hereby, abolished, and all laws now in force providing for the delivery to the Department of the Interior of public documents for distribution, other than such as are for the use of that Department, shall be, and the same are hereby, repealed: *Provided*, That the distribution of the reports of the Eleventh Census shall be continued and completed by the superintendent of documents, under existing laws and regulations. [28 Stat. L. 611.]

See note to section 24, *supra*.

SEC. 65. [*Free mail and franking privileges of superintendent of documents.* See POSTAL SERVICE, vol. 5, p. 785.]

SEC. 66. [*Assistants, printing, office, storage, etc., for superintendent of documents.*] The Public Printer is hereby authorized and directed, upon the requisition of the superintendent of documents, to appoint such assistants as may be necessary, and furnish such blanks and to do such printing and binding as are required by his office, the cost of the same to be charged against the appropriation for printing and binding for Congress, and the Public Printer shall provide convenient office, storage, and distributing rooms for the use of the superintendent of documents. [28 Stat. L. 611.]

See note to section 24, *supra*.

SEC. 67. [*Delivery of documents in departments, etc., to superintendent of documents.*] All documents at present remaining in charge of the several Executive Departments, bureaus, and offices of the Government not required for official use shall be delivered to the superintendent of documents, and hereafter all public documents accumulating in said Departments, bureaus, and offices not needed for official use shall be annually turned over to the superintendent of documents for distribution or sale. [28 Stat. L. 611.]

See note to section 24, *supra*.

This section supersedes Res. of March 3, 1887, No. 13, "Joint resolution providing for the sale of public documents," as follows:

[SEC. 1.] "That the Secretary of the Interior be, and he is hereby, authorized to sell, at cost-price, to any party wishing to purchase the same, any public document of which copies available for this purpose, not required for official use, remain: *Provided*,

That only one copy of any document be sold to any one person." [24 Stat. L. 647.]

"SEC. 2. That the Secretary of the Interior shall have kept a detailed statement of each and every public document sold, with the name of the purchaser and date of the purchase, and that he shall annually publish, among the documents accompanying his annual report, a statement showing the number of each public document sold during the fiscal year, and the price thereof." [24 Stat. L. 647.]

SEC. 68. [*Distribution of Congressional documents.*] Whenever in the division among Senators, Representatives, and Delegates of documents printed for the use of Congress there shall be an apportionment to each or either House

in round numbers, the Public Printer shall not deliver the full number so accredited at the respective folding rooms, but only the largest multiple of the number constituting the full membership of each or either House, including the Secretary and Sergeant-at-Arms of the Senate and Clerk and Doorkeeper of the House, which shall be contained in the round numbers thus accredited to each or either House, so that the number delivered shall divide evenly and without remainder among the members of the House to which they are delivered; and the remainder of all documents thus resulting shall be turned over to the superintendent of documents, to be distributed by him, first, to public and school libraries for the purpose of completing broken sets; second, to public and school libraries that have not been supplied with any portion of such sets; and, lastly, by sale to other persons; said libraries to be named to him by Senators, Representatives, and Delegates in Congress; and in this distribution the superintendent of documents shall see that as far as practicable an equal allowance is made to each Senator, Representative, and Delegate. [28 Stat. L. 612.]

See note to section 24, *supra*.

SEC. 69. [*Catalogue of publications — contents and number.*] A catalogue of Government publications shall be prepared by the superintendent of documents on the first day of each month, which shall show the documents printed during the preceding month, where obtainable, and the price thereof. Two thousand copies of such catalogue shall be printed in pamphlet form for distribution. [28 Stat. L. 612.]

See note to section 24, *supra*.

SEC. 70. [*Investigation of libraries as depositories.*] The superintendent of documents shall thoroughly investigate the condition of all libraries that are now designated depositories, and whenever he shall ascertain that the number of books in any such library, other than college libraries, is below one thousand, other than Government publications, or it has ceased to be maintained as a public library, he shall strike the same from the list, and the Senator, Representative, or Delegate shall designate another depository that shall meet the conditions herein required. [28 Stat. L. 612.]

See note to section 24, *supra*.

SEC. 71. [*Folding rooms, Senate and House — superintendent — distribution.* See CONGRESS, vol. 2, p. 230.]

SEC. 72. [*Documents not drawn by retiring members of Congress.*] Any Senator, Representative, or Delegate having public documents to his credit at the expiration of his term of office shall take the same prior to the convening of the next succeeding Congress, and if he shall not do so within such period he shall forfeit them to his successor in office. [28 Stat. L. 612.]

See note to section 24, *supra*.

Re-elected members. — See Act of June 4, 1897, ch. 2, sec. 1, *infra*, p. 176.

SEC. 73. [*Extra copies of documents — binding — number and allotment.*] Extra copies of documents and reports shall be printed promptly when the same shall be ready for publication, and shall be bound in paper or cloth as directed by the Joint Committee on Printing, and shall be of the number following in addition to the usual number: [28 Stat. L. 612.]

[*Report of Secretary of Agriculture.*] The Annual Report of the Secretary of Agriculture shall hereafter be submitted and printed in two parts, as follows:

Part one, which shall contain purely business and executive matter which it is necessary for the Secretary to submit to the President and Congress; part two, which shall contain such reports from the different bureaus and divisions, and such papers prepared by their special agents, accompanied by suitable illustrations as shall, in the opinion of the Secretary, be specially suited to interest and instruct the farmers of the country, and to include a general report of the operations of the Department for their information. There shall be printed of part one, one thousand copies for the Senate, two thousand copies for the House, and three thousand copies for the Department of Agriculture; and of part two, one hundred and ten thousand copies for the use of the Senate, three hundred and sixty thousand copies for the use of the House of Representatives, and thirty thousand copies for the use of the Department of Agriculture, the illustrations for the same to be executed under the supervision of the Public Printer, in accordance with directions of the Joint Committee on Printing, said illustrations to be subject to the approval of the Secretary of Agriculture; and the title of each of the said parts shall be such as to show that such part is complete in itself: *Provided*, That one edition of seventy-five thousand copies of the Special Report on Diseases of the Horse be printed, of which fifty thousand copies shall be for the use of the House of Representatives, and twenty-five thousand copies for the use of the Senate. [28 Stat. L. 612.]

Report on field operations of the division of soils.—See Res. of Feb. 23, 1901, No. 8, *infra*, p. 176.

[*Report of Bureau of Animal Industry.*] Of the Report of the Bureau of Animal Industry, thirty thousand copies, of which seven thousand shall be for the Senate, fourteen thousand for the House, and nine thousand for distribution by the Agricultural Department. [28 Stat. L. 613.]

[*Report of Chief of Weather Bureau.*] Of the Annual Report of the Chief of the Weather Bureau, four thousand copies; one thousand copies for the Senate, two thousand copies for the House, and one thousand copies for the Bureau. [28 Stat. L. 613.]

[*Ephemeris and Nautical Almanac.*] Of the Ephemeris and Nautical Almanac and of the papers supplementary thereto, one thousand five hundred copies; one hundred copies for the Senate, four hundred for the House, and one thousand for distribution or sale by the Navy Department. The five hundred copies printed for Congress and the usual number shall be for the calendar year next following, and those for the Navy Department for the third year following. The Secretary of the Navy is also authorized to cause additional copies of the Ephemeris, and of the Nautical Almanacs extracted therefrom, to be printed for the public service and for sale to navigators and others: *Provided*, That all moneys received from sales of the Ephemeris and of the Nautical Almanacs shall be deposited in the Treasury and placed to the credit of the general fund for public printing. [28 Stat. L. 613.]

See amendment by Res. of May 13, 1902, No. 20, and Act of July 1, 1902, ch. 1368, *infra*, pp. 177, 178, and notes under latter Act.

The former provision for the printing of the Ephemeris and Almanac was contained in Joint Res. No. 10, of Feb. 11, 1880, 21 Stat. L. 301, which is superseded by the provisions in the text.

Nature of publications explained.—It was said by Attorney-General Knox, in (1903) 24 Op. Atty.-Gen. 663: "It appears that, of its publications, the navy department has, for

many years, published two books; * * * one, and the larger, bound in cloth, called 'The American Ephemeris and Nautical Almanac,' and the other, bound in paper, called 'The American Nautical Almanac.' The former is intended chiefly for the navy, and for sale or free distribution to observatories, astronomers, colleges, libraries, etc., and of which the department disposes annually about 1,000 copies. The other contains in a condensed form much of that which is in the former, and is intended chiefly for the use of

navigation, and is adapted to the meridian of Greenwich, of which the department disposes annually about 2,300 copies. Your department publishes also what, in your note and in the Acts referred to, are called 'the papers supplementary thereto,' that is, supplementary to the one first above referred to; and I am asked how many copies of each of the three are now authorized to be printed."

See further as to the construction of this and the subsequent Acts on this subject Res. of May 13, 1902, No. 20, and Act of July 1, 1902, ch. 1368, *infra*, pp. 177, 178, and notes thereunder.

What additional copies authorized.—The secretary of the navy may still cause to be printed additional copies of the American

Nautical Almanac under the provisions of this section and as herein provided; but this authority does not authorize additional copies of the papers supplementary to the Ephemeris and Nautical Almanac. (1903) 24 Op. Atty. Gen. 663.

The secretary of the navy is authorized, under existing law, to cause to be printed 2,500 copies of the American Ephemeris and Nautical Almanac and 3,182 copies of "the papers supplementary thereto," and of the American, Nautical Almanac such "additional" copies thereof as he may deem necessary "for the public service and for sale to navigators and others." (1903) 24 Op. Atty. Gen. 663.

[*Observations of Naval Observatory.*] Of the Observations of the Naval Observatory, one thousand eight hundred copies; three hundred for the Senate, seven hundred for the House, and eight hundred for distribution by the Naval Observatory, and of the astronomical appendixes to the above observations, one thousand two hundred separate copies, and of the meteorological and magnetic observations one thousand separate copies for distribution by the Naval Observatory. [28 Stat. L. 613.]

[*Report of Superintendent of Coast and Geodetic Survey.*] Of the Report of the Superintendent of the Coast and Geodetic Survey, two thousand eight hundred copies in quarto form, bound in one volume, two hundred for the Senate, six hundred for the House, and two thousand for distribution by the Coast and Geodetic Survey. [28 Stat. L. 613, 29 Stat. L. 471.]

This paragraph was amended to read as above by the Res. of April 20, 1896, No. 46, 29 Stat. L. 471, "Joint Resolution Authorizing the Public Printer to print the Annual Report of the Superintendent of the United States Coast and Geodetic Survey in quarto form and to bind it in one volume." The paragraph, as originally enacted, provided "one thousand five hundred copies of part

one; two hundred copies for the Senate, six hundred copies for the House, and seven hundred copies for distribution by the Superintendent of the Coast and Geodetic Survey, and two thousand eight hundred copies of part two; two hundred for the Senate, six hundred for the House, and two thousand for distribution by the Superintendent of the Coast and Geodetic Survey."

[*Commercial Relations and Foreign Relations.*] Of Commercial Relations, and of Foreign Relations, three thousand copies of each; one thousand for the Senate and two thousand for the House. [28 Stat. L. 613.]

[*Report of Bureau of Ethnology.*] Of the Report of the Bureau of Ethnology, uniform with the preceding volumes of the series, eight thousand copies, one thousand five hundred for the Senate, three thousand for the House, and three thousand five hundred for distribution by the Bureau of Ethnology. [28 Stat. L. 613.]

[*Report of Commissioner of Fish and Fisheries.*] Of the Report of the Commissioner of Fish and Fisheries, eight thousand copies; two thousand for the Senate, four thousand for the House, and two thousand for distribution by the Fish Commission. [28 Stat. L. 614.]

This paragraph superseded Res. of Feb. 14, 1881, No. 12, "Joint resolution authorizing the Public Printer to print reports of the United States Fish Commissioner upon new discoveries in regard to fish-culture," as follows:

"That the Public Printer be, and he hereby

is, instructed to print and stereotype, from time to time, the regular number of nineteen hundred copies of any matter furnished him by the United States Commissioner of Fish and Fisheries relative to new observations, discoveries, and applications connected with fish-culture and the fisheries, to be capable

of being distributed in parts, and the whole to form an annual volume or bulletin not exceeding five hundred pages. The edition of said annual work shall consist of five thousand copies, of which two thousand five

hundred shall be for the use of the House of Representatives, one thousand for the use of the Senate, and one thousand five hundred for the use of the Commissioner of Fish and Fisheries." [21 Stat. L. 517.]

[*Bulletins of Fish Commission.*] Of the Bulletins of the Fish Commission, five thousand copies; one thousand for the Senate, two thousand for the House, and two thousand for distribution by the Commission. [28 Stat. L. 614.]

[*Report of Health Officer of District of Columbia.*] Of the Report of the Health Officer of the District of Columbia, one thousand five hundred copies; one hundred for the Senate, three hundred and sixty for the House, and one thousand and forty for distribution by the health officer. [28 Stat. L. 614.]

[*Report of Civil Service Commission.*] Of the Report of the Civil Service Commission, twenty-three thousand copies; one thousand for the Senate, two thousand for the House, and twenty thousand for distribution by the Civil Service Commission. [28 Stat. L. 614.]

[*Report of Commissioner of Education.*] Of the Report of the Commissioner of Education, thirty-five thousand copies; five thousand for the Senate, ten thousand for the House, and twenty thousand for distribution by the Commissioner of Education. [28 Stat. L. 614.]

[*Report of Geological Survey.*] Of the Report of the Geological Survey, uniform with the preceding reports, ten thousand copies; two thousand for the Senate, four thousand for the House, four thousand for distribution by the Geological Survey. [28 Stat. L. 614.]

Publications of Geological Survey, printing, etc. See Res. of May 16, 1902, No. 22, *infra*, p. 180, also GEOLOGICAL SURVEY, vol. 3, p. 156.

Report of mineral resources.—See Act of March 2, 1895, ch. 189, sec. 1, *infra*, p. 178; Res. of March 2, 1901, No. 17, *infra*, p. 180.

Monographs and bulletins.—See sec. 79, *infra*, p. 174; Act of March 2, 1895, ch. 189, sec. 1, *infra*, p. 178.

Reports as to gauging of streams, etc.—See Act of June 11, 1896, ch. 420, sec. 1, *infra*, p. 179; Res. of May 16, 1902, No. 22, *infra*, p. 180.

Distribution and sale of maps and atlases.—See Res. of Feb. 18, 1897, No. 13, *infra*, p. 180.

Reports as to hydrography and forestry.—See Res. of March 2, 1901, No. 17, *infra*, p. 180.

[*Report of Commissioner of Labor.*] Of the Report of the Commissioner of Labor, twenty-five thousand copies; five thousand for the Senate, ten thousand for the House, and ten thousand for distribution by the Commissioner of Labor. [28 Stat. L. 614.]

Official statistics of cities.—See LABOR, vol. 4, p. 783.

Extra copies of labor bulletins.—See Act of June 6, 1900, ch. 791, sec. 1, *infra*, p. 181.

Contents of reports.—See LABOR, vol. 4, p. 782, and Act of March 2, 1895, ch. 177, *infra*, p. 181.

The Act of March 2, 1895, ch. 177, 28 Stat. L. 805, provided as follows:

"The Commissioner of Labor is hereby authorized to prepare and publish a bulletin of the Department of Labor, as to the condition of labor in this and other countries, condensations of State and foreign labor re-

ports, facts as to conditions of employment, and such other facts as may be deemed of value to the industrial interests of the country, and there shall be printed one edition of not exceeding ten thousand copies of each issue of said bulletin for distribution by the Department of Labor."

The Act of June 4, 1897, ch. 2, 30 Stat. L. 61, provided as follows:

"There shall be printed fifteen thousand copies of each issue of the bulletin of the Department of Labor, authorized March second, eighteen hundred and ninety-five."

[*Report of Interstate Commerce Commission.*] Of the Annual Report of the Interstate Commerce Commission, three thousand copies; one thousand for

the Senate, two thousand for the House, and for the use of the Commission there may be printed such number of said report and other documents incident to interstate commerce for distribution by them as they may deem expedient. [28 Stat. L. 614.]

[*Revised Statutes and Supplements — pamphlet copies of Statutes — Statutes at Large — force as evidence — contents.* See STATUTES.]

[*President's Message.*] The message of the President without the accompanying documents and reports shall be printed, immediately upon its receipt by Congress, in pamphlet form. Fifteen thousand shall be printed, of which five thousand shall be for the Senate, and ten thousand for the House. [28 Stat. L. 615.]

[*President's Message and accompanying documents and reports of Departments.*] Of the President's Message and accompanying documents and of the annual reports of the Departments to Congress there shall be printed one thousand copies for the Senate and two thousand for the House: *Provided*, That of the reports of the Chief of Engineers of the Army, the Commissioner of Patents, the Commissioner of Internal Revenue, the report of the Chief Signal Officer of the War Department, and of the Chief of Ordnance, the usual number only shall be printed. [28 Stat. L. 615.]

[*Certain departmental reports not to be printed.*] The following reports required by law to be made to Congress shall not be printed unless the printing be recommended by the head of the Department making the same, and ordered by concurrent resolution of Congress, namely: Report of contracts for conveying the mails, report of fines and deductions in the Post-Office Department, the report of the Treasurer of accounts by him from time to time rendered to and settled with the First Comptroller, and the report of the proceedings of the annual meetings of the Board of Supervising Inspectors of Steam Vessels. [28 Stat. L. 616.]

[*Report of National Academy of Sciences.*] Of the Report of the National Academy of Sciences, two thousand copies; five hundred for the Senate, one thousand for the House, and five hundred for distribution by the Academy of Sciences. [28 Stat. L. 616.]

[*Memoirs of National Academy of Sciences.*] Of the Memoirs of the National Academy of Sciences, two thousand five hundred copies; five hundred for the Senate, one thousand for the House, and one thousand for distribution by the Academy of Sciences. [28 Stat. L. 616.]

[*Report of American Historical Association.*] Of the Report of the American Historical Association, three thousand copies; five hundred for the Senate, one thousand for the House, and one thousand five hundred for distribution by the association and the Smithsonian Institution. [28 Stat. L. 616.]

Additional copies. — See Res. of May 25, 1900, No. 27. *infra*, p. 182.

[*Army and Navy Registers.*] Of the Registers of the Army and Navy, fifteen hundred copies of each; five hundred for the Senate and one thousand for the House. [28 Stat. L. 616.]

[*Report of Smithsonian Institution.*] Of the Report of the Smithsonian Institution, ten thousand copies; one thousand for the Senate, two thousand

for the House, five thousand for distribution by the Smithsonian Institution, and two thousand for distribution by the National Museum. [28 Stat. L. 616.]

This section supersedes the Joint Resolution of March 3, 1885, No. 19, "To provide for printing the annual reports of the Smithsonian Institution," as follows:

"That the annual reports of the Smithsonian Institution shall be hereafter printed at

the Government Printing Office, in the same manner as the annual reports of the heads of Departments are now printed, for submission in print to the two Houses of Congress." [23 Stat. L. 520.]

[*Reports of Consular Officers.*] Of the Reports of Consular Officers, one thousand five hundred copies; five hundred for the Senate, one thousand for the House. [28 Stat. L. 616.]

The number has been raised to 10,000. See Act of March 9, 1898, ch. 55, *infra*, p. 182.

[*Statistical Abstract.*] Of the Statistical Abstract of the United States, twelve thousand copies; three thousand for the Senate, six thousand for the House, and three thousand for distribution by the Bureau of Statistics. [28 Stat. L. 616.]

[*Iron and steel tests.*] Of the Tests of Iron and Steel, five hundred copies for distribution by the War Department. [28 Stat. L. 616.]

[*Treasury Department Reports.*] Of the Finance Report of the Secretary of the Treasury, the Report on Commerce and Navigation, on Internal Commerce, of the Director of the Mint on the Production of Precious Metals, and of Mineral Resources of the United States, there shall be printed one thousand copies of each for the Senate and two thousand for the House in addition to those published as part of the departmental report.

Of the Annual Report of the Comptroller of the Currency, ten thousand copies; one thousand for the Senate, two thousand for the House, and seven thousand for distribution by the Comptroller of the Currency.

Of the Annual Report of the Commissioner of Navigation of the Treasury Department, one thousand copies for the Senate, two thousand for the House, and one thousand copies for distribution by the Commissioner; and of the Annual List of Merchant Vessels of the United States, five thousand copies for distribution by the Treasury Department. [28 Stat. L. 616.]

[*Report of Government Directors of Union Pacific Railways.*] Of the Report of the Government Directors of the Union Pacific Railways, one thousand five hundred copies; five hundred for the Senate and one thousand for the House. [28 Stat. L. 616.]

[*Eulogies — engraving.*] There shall be printed of eulogies of deceased Senators, Representatives, and Delegates eight thousand copies, of which number fifty copies, bound in full morocco, with gilt edges, shall be delivered to the family of the deceased, and one thousand nine hundred and fifty copies in cloth binding shall be delivered to the Senators, Representatives, or Delegates of the State or Territory represented by the deceased. The remaining number, also in cloth binding, shall be distributed in the proportion of two thousand to the Senate and four thousand to the House. The engraving for such eulogies shall be done at the Bureau of Engraving and Printing and paid for out of the appropriation for that Bureau. Of the "usual number" the bound volume shall contain in one volume for each House all eulogies during the session of Congress upon Senators and Representatives respectively. [28 Stat. L. 616.]

[*Manuals, Senate and House.*] Of the Senate Manual and of the Digest and Manual of the House of Representatives, each House shall print as many copies as it shall desire, even though the cost exceed five hundred dollars. [28 Stat. L. 617.]

[*Congressional Directory — official correspondence free.*] There shall be prepared under the direction of the Joint Committee on Printing a Congressional Directory, of which there shall be three editions during each long session and two editions during each short session of Congress. The first edition shall be distributed to Senators, Representatives, Delegates, the principal officers of Congress, and heads of Departments on the first day of the session, and shall be ready for distribution to others within one week thereafter. The number and distribution of such Directory shall be under the control of the Joint Committee on Printing. Official correspondence concerning the Directory may be had in penalty envelopes under the direction of the Joint Committee. [28 Stat. L. 617.]

Binding. — See Act of July 1, 1902, ch. 1351, *infra*, p. 183.

[*Abridgment of President's messages and accompanying documents — preparation.*] The Joint Committee on Printing shall appoint a competent person, who shall edit such portion of the reports and documents accompanying the annual message of the President or made directly to Congress as they may deem suitable for popular distribution, and prepare an alphabetical index thereto. The Public Printer shall furnish to the person so designated copies of all the said reports and documents as soon as printed; and the abridgement of the message and documents shall be prepared for the Printer by the first day of January, or as soon thereafter as practicable, of each year, and shall be printed by the Public Printer as soon as copy is furnished him. There shall be printed of such abridgement twelve thousand copies, of which four thousand shall be for the Senate and eight thousand for the House. [28 Stat. L. 617.]

[*Congressional Record — gratuitous distribution and subscriptions.*] The Public Printer shall furnish the Congressional Record as follows and shall furnish gratuitously no others in addition thereto: To the Vice-President and each Senator, forty-four copies; and to the Secretary and Sergeant-at-Arms of the Senate, each twenty copies, and to the Secretary for office use ten copies; to each Representative and Delegate, thirty copies, and to the Clerk and Doorkeeper of the House, each twenty copies, and to the Clerk, for office use, ten copies; to be supplied daily as originally published or in the revised and permanent form bound only in half Russia, or part in each form, as each may elect.

To the Vice-President and each Senator, Representative, and Delegate there shall be furnished two copies of the daily Record, one to be delivered at his residence and one at the Capitol.

To the President, for use of the Executive Office, four copies of the daily and one bound copy.

To the Chief Justice and each of the associate justices of the Supreme Court of the United States, the marshal and clerk of the said court, one daily and one bound copy.

To the governor of each State and Territory, one copy of the daily and one bound copy of the Record.

To the Official Reporter of the Senate and each of his assistant reporters, and to the official reporters of the House, each two copies of the daily and one copy of the bound Record.

To the superintendent of the Senate and House document rooms, each one copy of the daily and one bound copy.

To the Library of Congress, forty-five bound copies.

To the Senate and House libraries, ten bound copies to each.

See amendment noted below.

To the library of each of the eight Executive Departments, and to the Naval Observatory, Smithsonian Institution and the United States National Museum, one bound copy.

To the Soldiers' Home, and to each of the national homes for disabled volunteer soldiers, and to each of the State Soldiers' Homes established for either Federal or Confederate soldiers, one copy of the daily.

To the superintendent of documents, five hundred bound copies for distribution to depositories of public documents.

To each of our legations abroad, one copy of the daily Record, to be sent through the Secretary of State.

To each foreign legation in Washington whose government extends a like courtesy to our legations abroad, one copy of the daily Record, to be sent through the Secretary of State and furnished upon his requisition.

The Public Printer is authorized to furnish to subscribers the daily Record at eight dollars for the long and four dollars for the short session, or one dollar and fifty cents per month, payable in advance. The "usual number" of the Congressional Record shall not be printed. The daily and the permanent Record shall bear the same date which shall be of the actual day's proceedings reported therein. [28 Stat. L. 617.]

Amendment.—This section was amended by the Joint Resolution of March 19, 1896, No. 31, entitled "Joint Resolution Directing the Public Printer to supply the Senate and House Libraries each with ten additional copies of the Congressional Record," as follows:

"Whereas the number of copies of the Congressional Record provided for the Senate Library by section seventy-three of the Act in regard to public printing, approved January twelfth, eighteen hundred and ninety-five, has proved insufficient to supply the needs of the Senate: Therefore, *Resolved, &c.*, That section seventy-three of the Act of January twelfth, eighteen hundred and ninety-five, providing for the public printing and binding and the distribution of public documents, which reads: 'To the Senate and House Libraries, ten copies each,' be so amended as to read: 'To the Senate and House Libraries twenty copies each.'" [29 Stat. L. 468.]

The amendment has not been inserted in the text because of the obvious error in the statement as above given.

The paragraph was again amended by Act of June 11, 1896, ch. 420, sec. 1, 29 Stat. L. 454, by striking out after the words "to each Representative and Delegate, thirty copies," the words "of which number eight copies shall be sent by the Superintendent of Documents, one each to such public or school libraries other than designated depositories as shall be designated for this purpose by each Representative and Delegate in Congress," appearing in the section as originally enacted.

Superseded acts.—The provisions in the text superseded the following Acts:

Res. of Jan. 27, 1881, No. 3, "Joint resolution in reference to the distribution of the Congressional Record.

"That the Public Printer be authorized to furnish the Chief Justice and each of the associate justices of the Supreme Court of the United States, and the clerk and marshal of the court with a current copy of the Daily Congressional Record, and at the end of each session a bound copy of the proceedings of Congress for such session. And the Public Printer shall also furnish to the Official Reporter of the Senate five bound copies of the Congressional Record for each session." [21 Stat. L. 515.]

Res. of Aug. 2, 1882, No. 61, "Joint resolution to furnish the Congressional Record to each State and Territorial library.

"That the Public Printer be, and he is hereby authorized and directed to forward, free of charge to the State and Territorial libraries of each State and Territory having or that shall hereafter have and maintain a State and Territorial library, one bound copy of the Congressional Record of each session of Congress or special session of the Senate, beginning with the Forty-Seventh Congress; and the Public Printer is directed to print fifty additional copies of the same to meet the requirements of this joint resolution." [22 Stat. L. 390.]

Res. of March 3, 1883, No. 24, "Joint resolution authorizing the sale of the Congressional Directory and the current numbers of the Congressional Record.

"That it shall be lawful for the Public

Printer, under the direction of the Joint Committee of the Senate and House of Representatives on Printing, to print for sale, at a price sufficient to reimburse the expenses of such printing, the current Congressional Directory and the current numbers of the Congressional Record. The money derived from such sales shall be paid into the Treasury monthly to the credit of the appropriation for public printing, and no sale shall be made on credit." [22 Stat. L. 642.]

Res. of July 28, 1886, No. 26, "Joint resolution directing the Public Printer to forward the Congressional Record to our legations abroad.

"That the Public Printer be, and he is hereby, authorized and directed to forward, free of charge, through the Department of State, one copy of the daily Congressional Record to each of our legations abroad, commencing at the beginning of the present session." [24 Stat. L. 345.]

Newspaper correspondents.—See Res. of Feb. 17, 1897, No. 12, *infra*, p. 183.

Department of labor.—See Act of July 1, 1898, ch. 546, sec. 1, *infra*, p. 183.

Library of Congress.—See Res. of Jan. 28, 1899, No. 12, *infra*, p. 184; Res. of March 2, 1901, No. 16, *infra*, p. 184.

[*Official records of the Rebellion.*] The Secretary of War is hereby authorized and directed to furnish a complete set of the Official Records of the Union and Confederate Armies to each Senator and Member of the present Congress not already entitled by law to receive the same; and he is further authorized to use for this purpose such incomplete sets, not including any to the credit of Senators, as remain on hand uncalled for by beneficiaries designated to receive them under the authority contained in the Acts approved August seventh, eighteen hundred and eighty-two, and March tenth, eighteen hundred and eighty-eight; and the Secretary of War will call upon the Public Printer to print and bind such volumes or parts of volumes as will enable him to fill out the incomplete sets hereinbefore referred to. [28 Stat. L. 618.]

The "publication of the official records of the war of the rebellion, both of the Union and of the Confederate armies, * * * properly arranged in chronological order" was authorized by the Act of June 23, 1874, ch. 455, sec. 1, 18 Stat. L. 222. Their distribution and sale were provided for by Act of Aug. 7, 1882, ch. 433, sec. 1, 22 Stat. L. 320. It was provided by Act of July 31, 1886, ch. 827, 24 Stat. L. 195, that "hereafter the records prepared for publication * * * shall contain only the records of the war of the rebellion covering contemporaneous events, arranged chronologically." Further provisions for distribution were made by Res. of March 10, 1888, No. 6, 25 Stat. L. 618. It was provided by Act of Oct. 2, 1888, ch. 1069, 25 Stat.

L. 539, "That hereafter, before publication of any volume of said records, the manuscript copy shall be submitted to the Secretary of War, and revised by him, and shall not be published until he shall certify that it only contains the contemporaneous official records of the war of the rebellion, as provided for by the 'act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-seven, and for other purposes,' approved July thirty-first, eighteen hundred and eighty-six."

For further provisions, see Act of March 2, 1889, ch. 411, 25 Stat. L. 971, and Act of June 6, 1900, ch. 791, *infra*, p. 184, 185.

[*Report of public printer — right of printer to documents.*] There shall be printed of the Annual Report of the Public Printer one thousand copies, to be distributed under his direction, and he may retain out of all documents, bills, and resolutions printed the number of copies absolutely needful for the official use of the Government Printing Office, not exceeding five of each. [28 Stat. L. 618.]

[*Official register — preparation, contents, and distribution.*] To enable the officer charged with the duty of preparing the Official Register of the United States to publish the same, the Secretary of the Senate, the Clerk of the House of Representatives, the head of each Executive Department of the Government, and the chief of each and every bureau, office, commission, or institution not embraced in an Executive Department, in connection with which salaries are paid from the Treasury of the United States, shall, on the first day of July in each year in which a new Congress is to assemble, cause to be filed with the Secretary of the Interior a full and complete list of all officers, agents, clerks, and other employees of said Department, bureau, office, commission, or institution connected with the legislative, executive, or judicial service of the Govern-

ment, or paid from the United States Treasury, including military and naval officers of the United States, cadets, and midshipmen.

Said lists shall exhibit the salary, compensation, and emoluments allowed to each of said officers, agents, clerks, and other employees, the State or country in which he was born, the State or Territory and Congressional district and county of which he is a resident and from which he was appointed to office, and where employed.

A list of the names, force, and condition of all ships and vessels belonging to the United States, and when and where built, shall also be filed with the Secretary of the Interior by the heads of the Departments having supervision of such ships and vessels, for incorporation in the Official Register.

The Postmaster-General shall furnish a statement of all allowances made, during the period of two years next preceding said first day of July above mentioned, to each contractor on contracts for carrying the mails, discriminating the sum paid as stipulated by the original contract, and the sums paid as additional allowances.

The Secretary of the Interior shall cause the Official Register to be edited, indexed, and published by the chief clerk of the Interior Department, on the first day of December following the first day of July above mentioned.

Of the Official Register three thousand copies shall be printed and bound, which shall be distributed as follows: To the President of the United States, four copies, one copy of which shall be for the library of the Executive Mansion; to the Vice-President of the United States, two copies; to each Senator, Representative, and Delegate in Congress, one copy; to the Secretary and Sergeant-at-Arms of the Senate, to the Clerk and Sergeant-at-Arms of the House, one copy each; to the library of the Senate, ten copies; to the library of the House of Representatives, ten copies; to the Library of Congress, twenty-five copies; to the Department of State, one hundred copies; to the Treasury Department, one hundred and fifty copies; to the War Department, fifty copies; to the Navy Department, twenty copies; to the Department of Justice, twenty copies; to the Department of the Interior, two hundred copies; to the Post-Office Department, one hundred copies; to the Department of Agriculture, fifteen copies; to the Smithsonian Institution, four copies; to the Department of Labor, four copies; to the Government Printing Office, four copies; to the Interstate Commerce Commission, two copies; to the Civil Service Commission, four copies; to the Commissioners of the District of Columbia, two copies; to the Commissioner of Fish and Fisheries, two copies; and the remaining copies shall be delivered to the superintendent of documents, who is hereby authorized to send one copy to each designated depository and to such public college or school library not a depository of public documents, and one copy to such other person as shall be designated by each Senator, Representative, and Delegate in Congress, and shall hold the remainder for sale under the provisions of this law. The usual number of the Official Register shall not be printed. [28 Stat. L. 618.]

This paragraph superseded all prior provisions as to the preparation, contents, printing and distribution of the Biennial Register contained in R. S. secs. 510, 511, 3800, and Act of Jan. 23, 1874, ch. 15, 18 Stat. L. 5; Act of Dec. 15, 1877, ch. 4, 20 Stat. L. 13; Act of June 16, 1880, ch. 235, 21 Stat. L. 275; Res. of March 3, 1887, No. 20, 24 Stat. L. 649, and Act of March 3, 1893, ch. 311, 27 Stat. L. 708, which latter Act provided as follows:

"That hereafter the Official Register of the United States shall contain a statement which

will show, by Departments or offices, the number of officers and employees in the several Executive Departments, the Department of Labor, the Government Printing Office, and the offices of the government of the District of Columbia, appointed from each State and Territory and the District of Columbia, and the aggregate amount of their salaries or compensation."

Further provisions as to furnishing lists are given in Act of April 28, 1902, ch. 594, sec. 1, *infra*, p. 185.

[*Patent Office printing.*] The Commissioner of Patents, upon the requisition of the Secretary of the Interior, is authorized to continue the printing of the following: [28 Stat. L. 619.]

[*Patents issued.*] First. The patents for inventions and designs issued by the Patent Office, including grants, specifications, and drawings, together with copies of the same, and of patents already issued, in such number as may be needed for the business of the office. [28 Stat. L. 619.]

[*Trade marks and labels.*] Second. The certificates of trade-marks and labels registered in the Patent Office, including descriptions and drawings, together with copies of the same, and of trade-marks and labels heretofore registered, in such numbers as may be needed for the business of the office. [28 Stat. L. 619.]

[*Official Gazette.*] Third. The Official Gazette of the United States Patent Office in numbers sufficient to supply all who shall subscribe therefor at five dollars per annum; also to exchange for other scientific publications desirable for the use of the Patent Office; also to supply one copy to each Senator, Representative, and Delegate in Congress; also to supply one copy to eight such public libraries having over one thousand volumes, exclusive of Government publications, as shall be designated by each Senator, Representative, and Delegate in Congress, with one hundred additional copies, together with bimonthly and annual indexes for all the same; of the Official Gazette the usual number shall not be printed. [28 Stat. L. 619.]

[*Report of Commissioner of Patents.*] Fourth. The Report of the Commissioner of Patents for the fiscal year, not exceeding five hundred in number, for distribution by him; the Annual Report of the Commissioner of Patents to Congress, without the list of patents, not exceeding one thousand five hundred in number, for distribution by him; and of the Annual Report of the Commissioner of Patents to Congress, with the list of patents, five hundred copies for sale by him, if needed, and in addition thereto the usual number only shall be printed. [28 Stat. L. 619.]

[*Specifications and drawings of patents.*] Fifth. Copies of the specifications and drawings of each patent issued, bound in monthly volumes, one copy for each of the Executive Departments of the Government, one copy to be placed for free public inspection in each capitol of every State and Territory, one for the like purpose in the clerk's office of the district court of each judicial district of the United States, except when such offices are located in State or Territorial capitols, and one in the Library of Congress, which copies shall be certified under the hand of the Commissioner and seal of the Patent Office, and shall not be taken from the depositories for any other purpose than to be used as evidence; also one hundred additional copies of the same, for sale by him at a price to be fixed by the Secretary of the Interior. The "usual number" shall not be printed. [28 Stat. L. 620.]

[*Rules of practice — copies of laws — circulars.*] Sixth. Pamphlet copies of the rules of practice, pamphlet copies of the patent laws, and pamphlet copies of the laws and rules relating to trade-marks and labels, and circulars relating to the business of the office, all in such numbers as may be needed for the business of the office. The usual number shall not be printed. [28 Stat. L. 620.]

[*Decisions.*] Seventh. Annual volumes of the decisions of the Commissioner of Patents and of the United States courts in patent cases, not exceeding one

thousand five hundred in number, of which the usual number shall be printed, and for this purpose a copy of each shall be transmitted to Congress promptly when prepared. [28 Stat. L. 620.]

[*Indexes.*] Eighth. Indexes to patents relating to electricity, and indexes to foreign patents, in such numbers as may be needed for the business of office. The usual number shall not be printed. [28 Stat. L. 620.]

[*Lithographing, etc., contracts.*] All printing for the Patent Office making use of lithography or photolithography, together with the plates for the same, shall be contracted for and performed under the direction of the Commissioner of Patents, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe, and all other printing for the Patent Office shall be done by the Public Printer under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe: *Provided*, That the entire work may be done at the Government Printing Office whenever in the judgment of the Joint Committee on Printing the same would be to the interest of the Government. [28 Stat. L. 620.]

[*Inserting "compliments" forbidden.*] No report, document, or publication of any kind distributed by or from an Executive Department or bureau of the Government shall contain any notice that the same is sent with "the compliments" of an officer of the Government, or with any special notice that it is so sent, except that notice that it has been sent, with a request for an acknowledgment of its receipt, may be given. [28 Stat. L. 620.]

See note to section 24, *supra*.

This paragraph superseded the provisions of Act of May 3, 1893, ch. 208, sec. 1, as follows:

* * * "No report, document, or publication of any kind distributed by, or from an Executive Department or bureau of the Government shall hereafter contain any notice

that same is sent with 'the compliments' of an officer of the Government or with any special notice that it is so sent." * * * [27 Stat. L. 612.]

This latter paragraph was in turn a substitute for a less comprehensive provision contained in the Act of Aug. 5, 1892, ch. 380, 27 Stat. L. 388.

SEC. 74. [*Publications furnished officers and libraries — property in and use of.*] Government publications furnished to judicial and executive officers of the United States for their official use shall not become the property of these officers, but on the expiration of their official term shall be by them delivered to their successors in office and all Government publications delivered to designated depositories or other libraries shall be for public use without charge. [28 Stat. L. 620.]

See note to section 24, *supra*.

SEC. 75. [*Documents and reports to foreign legations.*] Documents and reports may be furnished to foreign legations to the United States upon request specifying those desired and requisition made upon the Public Printer by the Secretary of State: *Provided*, That such gratuitous distribution shall only be made to legations whose Governments furnish to legations from the United States copies of their printed and legislative documents desired. [28 Stat. L. 620.]

See note to section 24, *supra*.

SEC. 76. [*Coast and geodetic survey charts — distribution and sale.*] The charts published by the Coast and Geodetic Survey shall be sold at cost of paper and printing as nearly as practicable; and there shall be no free distribution of such charts except to the Departments and officers of the United States

requiring them for public use; and a number of copies of each sheet, not to exceed three hundred, to be presented to such foreign governments, libraries, and scientific associations, and institutions of learning as the Secretary of the Treasury may direct; but on the order of Senators, Representatives, and Delegates not to exceed ten copies to each may be distributed through the Superintendent of the Coast and Geodetic Survey. [28 Stat. L. 620.]

See note to section 24, *supra*.

This section supersedes the following Acts:

Act of June 20, 1878, ch. 359, as follows:

[SEC. 1.] * * * "That the charts published by the Coast Survey shall be sold at the office at Washington at the price of the printing and paper thereof, and elsewhere at the same price with the average cost of delivery added thereto; and hereafter there shall be no free distribution of such charts except to the departments of the United States and to the several states and officers

of the United States requiring them for public use, in accordance with the Act of June third, eighteen hundred and forty four." [20 Stat. L. 216.]

Act of March 3, 1879, ch. 182, sec. 1, as follows:

"That Senators, Representatives, and Delegates to the House of Representatives shall each be entitled to not more than ten charts published by the Coast Survey, for each regular session of Congress." [20 Stat. L. 382.]

SEC. 77. [*Hydrographic office charts, nautical books, etc. — publication and sale.* See SHIPPING AND NAVIGATION.]

SEC. 78. [*Foreign hydrographic charts — appropriations for publication.* See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 903, note under R. S. sec. 3686.]

SEC. 79. [*Geological Survey monographs and bulletins — publication and distribution.*] The scientific reports known as the monographs and bulletins of the Geological Survey shall not be published until specific and detailed estimates are made therefor and specific appropriations made in pursuance of such estimates; and no engravings for the annual reports for such monographs and bulletins, or of illustrations, sections, and maps, shall be done until specific estimates are submitted therefor and specific appropriations made based on such estimates. And there shall be distributed of monographs, bulletins and reports of the United States Geological Survey, now in possession of said Survey, being publications prior to the year eighteen hundred and ninety-four, one copy of every such publication to every public library which shall be designated to the superintendent of documents, as follows: Two public libraries to be designated by each of the Senators from the States, respectively, two public libraries by the Representative in Congress from each Congressional district, and two public libraries by the Delegate from each Territory; such public libraries to be additional to those to which the said publications are distributed under existing law. [28 Stat. L. 621.]

See note to section 24, *supra*.

This section superseded the provisions of the Act of Aug. 4, 1886, ch. 902, 24 Stat. L. 255 (see ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 889).

Extension of provisions of the section. See Res. of Feb. 28, 1896, No. 19, *infra*, p. 179.

For other provisions, see sec. 73, *supra*; and note, p. 165.

SEC. 92. [*Departmental distribution of publications.*] Government publications printed for or received by the Executive Departments, whether for official use or for distribution, shall be distributed by a competent person detailed to such duty in each Department by the head thereof. He shall keep an account in detail of all publications received and distributed by him. He shall prevent duplication, and make detailed report to the head of the Department, who shall transmit the same annually to Congress. [28 Stat. L. 623.]

See note to section 24, *supra*.

SEC. 95. [*Exchange of documents.*] Heads of Departments are authorized to exchange surplus documents for such other documents and books as may be required by them, when the same can be done to the advantage of the public service. [28 Stat. L. 623.]

See note to section 24, *supra*.

SEC. 98. [*Documents to department, etc., libraries.*] The libraries of the eight Executive Departments, of the United States Military Academy, and United States Naval Academy are hereby constituted designated depositories of Government publications, and the superintendent of documents shall supply one copy of said publications, in the same form as supplied to other depositories, to each of said libraries. [28 Stat. L. 624.]

See note to section 24, *supra*.

Joint Resolution Providing for the binding and distribution of public documents held in the custody of the Superintendent of Documents, unbound, upon orders of Senators, Representatives, Delegates, and officers of Congress, when such documents are not called for within two years after printing.

[Res. No. 36, of June 30, 1902, 32 Stat. L. 746.]

[*Binding and distribution of reserved sets of documents.*] That hereafter the documents reserved for binding upon orders of Senators, Representatives, Delegates, and officers of Congress, as provided in paragraph six, section fifty-four, of an Act approved January twelfth, eighteen hundred and ninety-five, providing for the public printing and binding and the distribution of public documents, if not called for and delivered within two years after printing, shall be bound in first grades of cloth and delivered to the Superintendent of Documents for distribution to libraries; and the Public Printer is hereby authorized and directed to bind in cloth all such documents heretofore delivered to the Superintendent of Documents for like distribution. [32 Stat. L. 746.]

The section mentioned in the text is given *supra*, p. 157.

[SEC. 1.] [*Statement of appropriations — usual number to be printed.*]
 * * * Statement of appropriations: For preparation, under the direction of the Committees on Appropriations of the Senate and House of Representatives, of the statements showing appropriations made, new offices created, offices the salaries of which have been omitted, increased, or reduced, together with a chronological history of the regular appropriation bills passed during the third session of the Fifty-third Congress, as required by the Act approved October nineteenth, eighteen hundred and eighty-eight, one thousand two hundred dollars, to be paid to the persons designated by the chairmen of said committees to do said work. And of the statements required to be prepared by said Act of October nineteenth, eighteen hundred and eighty-eight, there shall be printed, after the close of each regular session of Congress, the usual number of copies.
 * * * [28 Stat. L. 958.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189. The provisions of the Act of Oct. 19, 1888, ch. 1210,

referred to in the text are set out in ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 915.

Joint resolution to supply the Department of State with copies of bills and other documents.

[Res. No. 10, of April 5, 1888, 25 Stat. L. 620.]

[Copies of bills, resolutions, and documents to Department of State.] That the Public Printer be, and he is hereby, authorized and directed to furnish the Department of State, out of the usual number, with ten copies of each bill and joint resolution, and twenty copies of each executive document, miscellaneous document, and report of committee of either House of Congress. [25 Stat. L. 620.]

See the following text.

Joint Resolution To supply the Department of State with documents.

[Res. No. 14, of Feb. 7, 1896, 29 Stat. L. 463.]

[Documents to Department of State.] That the Public Printer be, and he is hereby, authorized and directed to print, in addition to the usual number, and furnish the Department of State with twenty copies of each Senate and House of Representatives document and report. [29 Stat. L. 463.]

The "usual number" here referred to is provided for by Act of Jan. 12, 1895, ch. 23, sec. 54, *supra*, p. 157.

[SEC. 1.] [Time for distributing documents extended—members re-elected.] * * * That the time allowed Members of the Fifty-fourth Congress to distribute public documents to their credit, or the credit of their respective districts in the Interior or other Departments and Bureaus, and in the Government Printing Office, on March first, eighteen hundred and ninety-seven, and to present the names of libraries, public institutions, and individuals to receive such documents, be, and the same is hereby, extended to December first, eighteen hundred and ninety-seven, and hereafter the time for such distribution by Members of Congress reelected shall continue during their successive terms and until their right to frank documents shall end. * * * [30 Stat. L. 62.]

This is from the Sundry Civil Appropriation Act of June 4, 1897, ch. 2, and amends Act of Jan. 12, 1895, ch. 23, sec. 72, *supra*, p. 162.

This same provision with but slight verbal difference constitutes Res. of March 25, 1887, No. 4, 30 Stat. L. 217.

Joint Resolution Providing for the printing annually of the Report on Field Operations of the Division of Soils, Department of Agriculture.

[Res. No. 8, of Feb. 23, 1901, 31 Stat. L. 1462.]

[Report on Field Operations of Division of Soils, Department of Agriculture.] That there be printed seventeen thousand copies of the Report on Field Operations of the Division of Soils, Department of Agriculture, for nineteen hundred, of which three thousand copies shall be for the use of the Senate, six thousand copies for the use of the House of Representatives, and eight thousand copies for the use of the Department of Agriculture; and that annually hereafter a similar report shall be prepared and printed, the edition to be the same as for the report herein provided. [31 Stat. L. 1462.]

Other provisions in relation to reports of agricultural department. See following text, and Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162.

[*Index of agricultural literature.*] * * * And the Secretary of Agriculture is hereby authorized to furnish to such institutions or individuals as may care to buy them copies of the card index of agricultural literature prepared by the Office of Experiment Stations, and charge for the same a price covering the additional expense involved in the preparation of these copies, and he is hereby authorized to apply the moneys received toward the expense of the preparation of the index. * * * [32 Stat. L. 302.]

This is from the Department of Agriculture Appropriation Act of June 3, 1902, ch. 985.

The same provision has appeared in the Appropriation Acts of April 23, 1897, ch. 1,

sec. 1, 30 Stat. L. 6; March 22, 1898, ch. 85, 30 Stat. L. 335; March 1, 1899, ch. 325, 30 Stat. L. 953; May 25, 1900, ch. 555, 31 Stat. L. 199; March 2, 1901, ch. 805, 31 Stat. L. 935.

[SEC. 1.] [*United States National Herbarium contributions — printing and sale.*] * * * For printing and publishing the contributions from the United States National Herbarium, the editions of which shall not be less than three thousand copies, including the preparation of necessary illustrations, proof reading, bibliographical work, and special editorial work, * * * dollars: *Provided*, That one-half of said copies shall be placed on sale at an advance of ten per centum over their cost. * * * [32 Stat. L. 440.]

This is from the Sundry Civil Appropriation Act of June 28, 1902, ch. 1301.

Joint Resolution Providing for the printing of the American Ephemeris and Nautical Almanac.

[Res. No. 20, of May 13, 1902, 32 Stat. L. 740.]

[*American Ephemeris and Nautical Almanac — number and distribution.*] That hereafter the "usual number" of copies of the American Ephemeris and Nautical Almanac shall not be printed. In lieu thereof there shall be printed and bound one thousand one hundred copies of the same, uniform with the editions printed for the Navy Department, as provided in section seventy-three, paragraph five, of an Act approved January twelfth, eighteen hundred and ninety-five, providing for the public printing, binding, and distribution of public documents; one hundred copies for the Senate, four hundred for the House, and six hundred for the Superintendent of Documents for distribution to State and Territorial libraries and designated depositories. [32 Stat. L. 740.]

See, however, following Act and note thereunder.

Application of resolution.—This resolution does not apply to the American Nautical Almanac, and the papers supplementary thereto. (1903) 24 Op. Atty.-Gen. 663.

Effect of other acts.—The provision for printing the "usual number" of copies, abrogated by this resolution, is not revived by the provisions of the Act of July 1, 1902 (see following text). (1903) 24 Op. Atty.-Gen. 663.

American Nautical Almanac and supplementary papers.—This Act and the Act of July 1, 1902 (see following text), refer only to the American Ephemeris and Nautical Almanac, and do not fix the number of copies

to be printed of either the American Nautical Almanac or the papers supplementary thereto, but as to these leave the number unchanged. (1903) 24 Op. Atty.-Gen. 663.

Additional copies forbidden.—This provision and the provisions of the Act of July 1, 1902 (see following text), annulled that portion of sec. 73 of the Act of Jan. 12, 1895, which gave to the secretary of the navy authority to cause to be printed additional copies of the Ephemeris and Nautical Almanac for the public service and for sale to navigators and others. The additional copies there mentioned were copies in addition to the 1,500 extra copies provided for in that section. (1903) 24 Op. Atty.-Gen. 663.

[*American Ephemeris and Nautical Almanac — number and distribution.*] Publication of the American Ephemeris and Nautical Almanac: Hereafter there shall be published of the American Ephemeris and Nautical Almanac two thousand five hundred copies, five hundred of which shall be for the use of the Senate, one thousand for the use of the House of Representatives, and one thousand for distribution or sale by the Navy Department. [32 Stat. L. 678.]

This is from the Naval Appropriation Act of July 1, 1902, ch. 1368.

Prior acts on same subject. See preceding text and Act of Jan. 12, 1895, ch. 23, secs. 73, 79, *supra*, pp. 163, 174.

To what publications applicable. — This Act does not apply to the American Nautical Almanac and papers supplementary thereto,

and the number of copies thereof to be printed is determined under the provisions of the Act of Jan. 12, 1895, sec. 73, *supra*, p. 163. (1903) 24 Op. Atty-Gen. 663.

Number authorized. — The law now authorizes the printing of 2,500 copies of the Ephemeris and Nautical Almanac and no more. (1903) 24 Op. Atty-Gen. 663.

Joint resolution to distribute copies of special memoirs and reports of the United States Geological Survey.

[Res. No. 16, of March 3, 1887, 24 Stat. L. 647.]

[*Geological Survey memoirs and reports — distribution to libraries.*] That there shall be distributed from the number of special memoirs and reports of the United States Geological Survey now authorized by law one copy of every such publication to every public library which shall be designated to the Secretary of the Interior as follows: Two public libraries to be designated by each of the Senators from the States, respectively, two public libraries by the Representative in Congress from every Congressional district, and two public libraries by the Delegate from every Territory; such public libraries to be additional to those to which the said publications are distributed under existing law. [24 Stat. L. 647.]

See, however, for other provisions, Act of Jan. 12, 1895, ch. 23, secs. 73, 79, *supra* pp. 165, 174.

[Sec. 1.] [*Geological Survey — report of mineral resources — printing — pamphlet edition — economic papers — cost.*] That hereafter the report of the mineral resources of the United States shall be issued as a part of the report of the Director of the Geological Survey, and printed for each preceding calendar year as soon as compiled and transmitted for publication, and that the separate chapters on any given mineral product, such as iron, coal, building stone, and so forth, shall be printed as rapidly as transmitted for publication; that a pamphlet edition of any chapter shall be printed for distribution on the request of the Director of the Geological Survey, approved by Secretary of the Interior, the size of the edition to be controlled by the importance of the mineral treated; that hereafter papers for the Director's annual report that are of a strictly economic character shall be issued in pamphlet form, in the same manner as prescribed above for the report on the mineral resources; that the entire cost of paper, printing, and binding of said pamphlets shall hereafter not exceed three thousand five hundred dollars. * * * [28 Stat. L. 960, 30 Stat. L. 61.]

This and the following paragraph are from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189, sec. 1.

The last clause of the paragraph, which originally read "that the entire cost of paper, printing, and binding of all of the above pro-

vided for pamphlets shall not exceed two thousand dollars," was amended by the Act of June 4, 1897, ch. 2, 30 Stat. L. 61, in the following paragraph:

"In the sundry civil Act approved March second, eighteen hundred and ninety-five

under the head of engraving the illustrations necessary for the report of the Director, and for printing advance copies of papers on economic resources, that provision which restricts the amount to be expended for the paper, printing, and binding of the pamphlets therein mentioned, in the following words: 'Shall not exceed two thousand dollars,' is hereby amended by striking out 'two thou-

sand dollars' and inserting 'three thousand five hundred dollars,' so that the clause shall read: 'The entire cost of paper, printing, and binding of said pamphlets shall hereafter not exceed three thousand five hundred dollars.'"

See Act of Jan. 12, 1895, ch. 23, secs. 73, 79, *supra*, pp. 165, 174, and the provisions hereinafter following.

[*Geological Survey — monographs and bulletins.*] * * * That hereafter three thousand copies of the monographs and bulletins of the Geological Survey shall be published for scientific exchanges and for sale at the cost of paper, printing, and binding, and ten per centum thereof added.
* * * [28 Stat. L. 960.]

See note to prior paragraph.

Joint Resolution Extending the provisions of section seventy-nine of "An Act providing for the public printing and binding and the distribution of public documents," approved January twelfth, eighteen hundred and ninety-five, so as to include monographs, bulletins, and reports of the Geological Survey published in eighteen hundred and ninety-four and succeeding years.

[Res. No. 19, of Feb. 26, 1896, 29 Stat. L. 465.]

[*Geological Survey — extension of distribution of publications.*] That the provisions of section seventy-nine of "An Act providing for the public printing and binding and the distribution of public documents," approved January twelfth, eighteen hundred and ninety-five, which section reads as follows:

"There shall be distributed of monographs, bulletins, and reports of the United States Geological Survey, now in possession of said Survey, being publications prior to the year eighteen hundred and ninety-four, one copy of every such publication to every public library which shall be designated to the superintendent of documents, as follows: Two public libraries to be designated by each of the Senators from the States, respectively, two public libraries by the Representative in Congress from each Congressional district, and two public libraries by the Delegate from each Territory; such public libraries to be additional to those to which said publications are distributed under existing law," shall be extended to the monographs, bulletins, and reports of the Geological Survey which were published during the year eighteen hundred and ninety-four, and to those which have been published since that year, and to those which may be published in the future: *Provided*, That nothing herein contained shall be construed to interfere with the distribution of memoirs and reports, so far as the same is provided for by the joint resolution "To distribute copies of special memoirs and reports of the United States Geological Survey," approved March third, eighteen hundred and eighty-seven. [29 Stat. L. 465.]

The provisions of the section mentioned in the text are set out *supra*, p. 174.

[SEC. 1.] [*Geological Survey — reports as to gauging streams.*] * * * That hereafter the reports of the Geological Survey in relation to the gauging of streams and to the methods of utilizing the water resources may be printed in octavo form, not to exceed one hundred pages in length and five thousand copies in number; one thousand copies of which shall be for the official use of the

Geological Survey, one thousand five hundred copies shall be delivered to the Senate, and two thousand five hundred copies shall be delivered to the House of Representatives, for distribution * * * [29 Stat. L. 453.]

This is from the Sundry Civil Appropriation Act of June 11, 1896, ch. 420.

size and number of copies is repealed by Res. of May 16, 1902, No. 22, *infra*.

Repeal.—The provisions restricting the

Joint Resolution Providing for the distribution of the maps and atlases of the United States Geological Survey.

[Res. No. 13, of Feb. 18, 1897, 29 Stat. L. 701.]

[SEC. 1.] [*Geological Survey — maps and atlases — sale and distribution.*] That the Director of the Geological Survey be, and is hereby, authorized and directed, on the approval of the Secretary of the Interior, to dispose of the topographic and geologic maps and atlases of the United States, made and published by the Geological Survey, at such prices and under such regulations as may from time to time be fixed by him and approved by the Secretary of the Interior; and that a number of copies of each map or atlas, not exceeding five hundred, shall be distributed gratuitously among foreign governments and Departments of our own Government, to literary and scientific associations, and to such educational institutions or libraries as may be designated by the Director of the Survey and approved by the Secretary of the Interior. [29 Stat. L. 701.]

This section superseded the provisions of the Act of June 11, 1896, ch. 420, as follows: "and hereafter the Director of the Geological Survey, with the approval of the Secre-

tary of the Interior, is authorized to sell copies of topographical maps with text at cost and ten per centum added;" [29 Stat. L. 436.]

SEC. 2. [*Copies for members of Congress.*] That one copy of each map and atlas shall be sent to each Senator and each Representative and Delegate in Congress, if published within his term; and that a second copy shall be placed at the disposal of each such Senator, Representative, and Delegate. [29 Stat. L. 701.]

Joint Resolution Concerning printing of additional copies of the Annual Report of the Geological Survey.

[Res. No. 17, of March 2, 1901, 31 Stat. L. 1465.]

[*Geological Survey — additional copies of parts of reports.*] That of the volumes or parts of the Annual Report of the Geological Survey which relate to hydrography, forestry, and mining and mineral resources there shall hereafter be published one thousand copies in addition to the number now published, for distribution by the Geological Survey. [31 Stat. L. 1465.]

Joint Resolution Relating to publications of the Geological Survey.

[Res. No. 22, of May 16, 1902, 32 Stat. L. 741.]

[*Geological Survey publications — what to consist of — number and distribution.*] That hereafter the publications of the Geological Survey shall consist of the annual report of the Director, which shall be confined to one volume of royal octavo size; monographs, of quarto size; professional papers, of quarto size; bulletins, of ordinary octavo size; mineral resources, of ordinary octavo

size; water-supply and irrigation papers, of ordinary octavo size; and such maps, folios, and atlases as may be required by existing law.

That hereafter the reports of the Geological Survey, except the annual report of the Director, shall be published in editions as recommended in each case by the Director and approved by the Secretary of the Interior, but not to exceed ten thousand copies.

That whenever the edition of any of the reports of the Survey shall have become exhausted, and the demand for it continues, there shall be published, on the requisition of the Secretary of the Interior, as many additional copies of the report as the Director of the Survey shall state will, in his judgment, be necessary to meet the demand.

That the bulletins and professional papers shall be distributed gratuitously, and not sold; and that of the number published one thousand copies shall be delivered to the Senate and two thousand copies shall be delivered to the House of Representatives for distribution.

That the provision of law approved June eleventh, eighteen hundred and ninety-six, restricting the water-supply papers to one hundred pages and to editions of five thousand copies shall be, and hereby is, rescinded.

That the Director of the Survey shall transmit to the Library of Congress two copies of every report of the Bureau as soon as the first delivery to the Survey is made, such copies to be additional to those received by the Library of Congress under existing law. [32 Stat. L. 741.]

See further Act of Jan. 12, 1895, ch. 23, secs. 73, 79, *supra*, pp. 162, 174, and provisions immediately preceding those in the text.

[SEC. 1.] [*Labor bulletins — number authorized.*] * * * The Commissioner of Labor is hereby authorized to prepare and publish a bulletin of the Department of Labor, as to the condition of labor in this and other countries, condensations of State and foreign labor reports, facts as to conditions of employment, and such other facts as may be deemed of value to the industrial interests of the country, and there shall be printed one edition of not exceeding ten thousand copies of each issue of said bulletin for distribution by the Department of Labor. * * * [28 Stat. L. 805.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 2, 1895, ch. 177.

Amendment. — See following text.

[SEC. 1.] [*Labor bulletins — number increased.*] * * * There shall be printed fifteen thousand copies of each issue of the bulletin of the Department of Labor, authorized March second, eighteen hundred and ninety-five. * * * [30 Stat. L. 61.]

This is from the Sundry Civil Appropriation Act of April 23, 1897, ch. 2. The provision referred to in this section is given in the preceding text.

[SEC. 1.] [*Labor bulletins — number increased.*] * * * The Public Printer is hereby authorized to print such number of extra copies of the bi-monthly Bulletin of the Department of Labor, not to exceed twenty thousand of any single issue, when in the opinion of the Commissioner of Labor the demand for the Bulletin makes an extra edition necessary. * * * [31 Stat. L. 644.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162.

Other provisions are set out above and in

Joint Resolution To print the annual reports of the American Historical Association.

[Res. No. 27, of May 25, 1900, 31 Stat. L. 717.]

[*Report of American Historical Association — additional copies.*] That there be printed of the annual reports of the American Historical Association, beginning with the report of the year eighteen hundred and ninety-nine, two thousand five hundred copies in addition to those provided for under existing law, of which five hundred copies shall be for the use of the Senate, one thousand copies for the use of the House of Representatives, and one thousand copies for the use of the American Historical Association. [31 Stat. L. 717.]

For prior provisions, see Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162.

Sec. 211. [*Publication of commercial information.*] The Secretary of State shall publish official notifications, from time to time, of such commercial information communicated to him by diplomatic and consular officers, as he may deem important to the public interests, in such newspapers, not to exceed three in number, as he may select. [R. S.]

Act of Aug. 18, 1856, ch. 127, 11 Stat. L. 60.

[*Consular and other commercial reports — sale.*] * * * For printing and distributing more frequently the publications by the Department of State of the consular and other commercial reports, including circular letters to chambers of commerce, * * * That such publication may be sold at such rates as may be fixed by said department, and the proceeds of all sales to be paid into the Treasury; * * * [21 Stat. L. 271.]

This is from the Sundry Civil Appropriation Act of June 16, 1880, ch. 235. A similar provision was contained in the Act of March 3, 1881, ch. 130, 21 Stat. L. 391.

[*Such reports not to discuss politics, religion, etc.*] * * * For printing and distributing the publications by the Department of State of the consular and other commercial reports, including circular letters to chambers of commerce, * * * *Provided*, That no part of such reports discussing partisan political, religious, or moral questions shall be published. * * * [23 Stat. L. 235.]

This is from the Consular and Diplomatic Appropriation Act of July 7, 1884, ch. 333. A similar provision appears in the Act of Feb. 25, 1885, ch. 150, 23 Stat. L. 324.

[*Terms of measure, weight, and money in such reports — number.*] * * * Preparation, printing, publication, and distribution by the Department of State of the diplomatic, consular, and other commercial reports, * * * That all terms of measure, weight, and money shall be reduced to and expressed in terms of measure, weight, and coin of the United States, as well as in the foreign terms; that each issue of diplomatic, consular, and other commercial reports shall not exceed ten thousand copies. * * * [30 Stat. L. 272.]

This is from the Diplomatic and Consular Appropriation Act of March 9, 1898, ch. 55. This provision has been repealed in the Acts of Feb. 9, 1899, ch. 128, 30 Stat. L. 833; April

4, 1900, ch. 159, 31 Stat. L. 171; March 2, 1901, ch. 802, 31 Stat. L. 894; March 22, 1902, ch. 22, 32 Stat. L. 88. The provision excepted as to the number of copies has appeared

in Acts of July 25, 1894, ch. 166, 28 Stat. L. 150; March 2, 1895, ch. 185, 28 Stat. L. 825; Feb. 27, 1896, ch. 34, 29 Stat. L. 38; Feb. 20, 1897, ch. 268, 29 Stat. L. 590.

The number of consular reports was limited to 1500 by Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162). The number was limited to 7,000 by Act of Feb. 20, 1897, ch. 268, 29 Stat. L. 590. The provisions in the

text raised the limit to 10,000, and superseded the provision of Act of March 2, 1895, ch. 189, as follows:

"That hereafter the Secretary of State be, and he is hereby, authorized to print of each issue of consular reports an edition not exceeding seven thousand copies." [28 Stat. L. 959.]

Joint Resolution Providing for the printing of the Monthly Summary Statement of Imports and Exports of the Bureau of Statistics, Treasury Department.

[Res. No. 1, of Dec. 18, 1895, 29 Stat. L. 495.]

[*Summary of imports and exports and statistical information.*] That there shall be printed monthly by the Public Printer thirty-five hundred copies of the Monthly Summary Statement of Imports and Exports and other statistical information prepared by the Chief of the Bureau of Statistics, Treasury Department, five hundred copies of which shall be for the use of the Senate, one thousand copies for the use of the House of Representatives, and two thousand copies for use of the Treasury Department. [29 Stat. L. 459.]

Statistical abstract. — See Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162.

[*Congressional Directory — binding.*] * * * Hereafter all copies of the Congressional Directory delivered to Senators and Representatives for distribution shall be bound in cloth. * * * [32 Stat. L. 583.]

This is from the Deficiencies Appropriation Act of July 1, 1902, ch. 1351.

Joint Resolution To furnish the daily Congressional Record to members of the press, and so forth.

[Res. No. 12, of Feb. 17, 1897, 29 Stat. L. 700.]

[*Congressional Record — to be furnished newspaper correspondents.*] That the Public Printer be, and he is hereby, authorized and directed to supply to each newspaper correspondent whose name appears in the Congressional Directory, and who makes application therefor, for his personal use and that of the paper or papers he represents, one copy of the daily Congressional Record, and one copy of the bound Congressional Record, the same to be sent to the office address of each member of the press, or elsewhere in the city of Washington, as he may direct. [29 Stat. L. 700.]

This provision was amended by the joint resolution of March 26, 1900, No. 15, 31 Stat. L. 713, by the addition of the words "and one copy of the bound Congressional Record" and other slight changes to read as given above.

Manner of distributing Congressional Record. See Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162, and the provisions hereinafter following.

[SEC. 1.] [*Congressional Record to Department of Labor.*] * * * And hereafter one bound copy of the Congressional Record shall be furnished gratuitously to the Department of Labor. * * * [30 Stat. L. 648.]

This is from the Sundry Civil Appropriation Act of July 1, 1898, ch. 546.

Joint Resolution To furnish the Congressional Record to the Library of Congress.

[Res. No. 12, of Jan. 28, 1899, 30 Stat. L. 1388.]

[*Congressional Record to Library of Congress.*] That the Public Printer be, and he hereby is, authorized and directed to supply to the Library of Congress six copies of the daily Congressional Record, for use in the following departments: Librarian's office, reading room, Senators' reading room, Representatives' reading room. [30 Stat. L. 1388.]

Provision for distribution of the Congressional Record is made by Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162, and provisions preceding and following the provision in the text.

Joint Resolution To regulate the distribution of public documents to the Library of Congress for its own use and for international exchange.

[Res. No. 16, of March 2, 1901, 31 Stat. L. 1464.]

[SEC. 1.] [*Distribution of public documents to Library of Congress.*] That of the publications described in this section the number of copies which shall be printed and distributed by the Public Printer to the Library of Congress for its own use and for international exchange in lieu of the number now provided by law shall be sixty-two, except as such number shall be enlarged to not exceeding one hundred copies by request of the Librarian of Congress, to wit: The House documents and reports, bound; the Senate documents and reports, bound; the House Journals, bound; the Senate Journals, bound; all other documents bearing a Congressional number and all documents not bearing a Congressional number printed by order of either House of Congress, or by order of any Department, bureau, commission, or officer of the Government, except confidential matter, blank forms, and circular letters not of a public character; the Revised Statutes, bound; the Statutes at Large, bound; the Congressional Record, bound; the Official Register of the United States, bound. [31 Stat. L. 1464.]

Other provisions for documents to library of Congress. See provisions immediately preceding and following the above text, and R. S. 3796, *supra*, p. 154; Act of Jan. 12, 1895,

ch. 23, secs. 57, 73, *supra*, pp. 158, 162; R. S. secs. 97, 98, LIBRARY OF CONGRESS, vol. 4, p. 803.

SEC. 2. [*Unbound copies to Library of Congress.*] That in addition to the foregoing the Public Printer shall supply to the Library of Congress for its own use two copies of each of the above-described publications, unbound, as published; five copies of all bills and resolutions; ten copies of the daily Congressional Record; and two copies of all documents printed for the use of Congressional committees not of a confidential character. [31 Stat. L. 1464.]

SEC. 3. [*Government publications not printed at Government Printing Office to Library of Congress.*] That of any publication printed at the Government expense by direction of any Department, commission, bureau, or officer of the Government elsewhere than at the Government Printing Office there shall be supplied to the Library of Congress for its own use and for international exchange sixty-two copies, except as such number shall be enlarged to not exceeding one hundred copies by request of the Joint Committee on the Library. [31 Stat. L. 1465.]

[SEC. 1.] [*Records of the rebellion accessible to the public.*] * * *
And from and after the passage of this act the records which have been, or which

may hereafter be, selected for publication shall be accessible to the public, under such regulations as the Secretary of War may prescribe, but in no case shall such regulations permit the removal of the original records from the Department building. * * * [25 Stat. L. 971.]

This is from the Sundry Civil Appropriation Act of March 2, 1889, ch. 411. The provision of the Act immediately preceding that in the text is as follows: "That hereafter the preparation and publication of said records shall be conducted, under the Secretary of War, by a board of three persons, one of whom shall be an officer of the Army, to be

selected by the Secretary of War, and two civilian experts, to be appointed by the Secretary of War, the compensation for said civilian experts to be fixed by the Secretary of War and to be paid from this appropriation; and the whole work of preparation and publication shall be completed within five years." [25 Stat. L. 970.]

[Sec. 1.] [*Printing and distribution of official records of the rebellion.*]

* * * That the Secretary of War be, and he is hereby, authorized and directed to furnish one complete set of the Official Records of the Union and Confederate Armies to each Senator, Representative, and Delegate of the Fifty-sixth Congress not now entitled by law to receive the same; and in addition thereto he is also authorized and directed to furnish two complete sets of said work to each Senator, Representative and Delegate of the same Congress, irrespective of his having been already supplied, using for this purpose, as far as possible, those now stored in the War Department and remaining unsold or unclaimed by beneficiaries designated to receive them under the several Acts of Congress providing for the distribution and sale of this publication: *Provided*, That the Secretary of War may call upon the Public Printer to print and bind such number or copies of certain volumes or parts as may be found necessary to complete the sets referred to. * * * [31 Stat. L. 632.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

A similar provision relating to the Fifty-

third Congress is contained in Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162, and see notes thereunder.

[Sec. 1.] [*Biennial register — no extra pay for compiling.*] * * *

That hereafter no extra compensation shall be allowed any officer or clerk of the Interior Department for compiling the Biennial Register. * * * [22 Stat. L. 274.]

This is from the Deficiencies Appropriation Act of Aug. 5, 1882, ch. 390.

[Sec. 1.] [*List of employees to be furnished for Official Register.*] * * *

That for the fiscal year of nineteen hundred and two and thereafter, a full and complete list of all officers, agents, clerks, and other employees of the office of the Comptroller of the Currency, including bank examiners, receivers and attorneys for receivers, and clerks employed by such examiners and receivers, or any other person connected with the work of said office in Washington or elsewhere, whose salary or compensation is paid from the Treasury of the United States or assessed against or collected from existing or failed banks under their supervision or control, shall be transmitted to the Secretary of the Interior in accordance with the provisions of an Act of Congress approved January twelfth, eighteen hundred and eighty-five, relating to the Official Register: * * * [32 Stat. L. 138.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 594.

Provisions as to the Official Register are given in Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162.

[SEC. 1.] [*Patent Office Official Gazette may be exchanged.*] * * * United States Patent Office: * * * That hereafter the Official Gazette may be exchanged for publications of a scientific or useful character published in this or any foreign country adapted to the needs and uses of the scientific library of the Patent Office. * * * [26 Stat. L. 259.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 11, 1890, ch. 667.

Printing and distribution.—See Act of Jan. 12, 1895, ch. 23, sec. 73, *supra*, p. 162.

Joint Resolution Authorizing the printing of extra copies of the publications of the Office of Naval Intelligence, Navy Department.

[Res. No. 14, of March 21, 1900, 31 Stat. L. 713.]

[*Publications of Naval Intelligence Office — extra copies.*] That the Secretary of the Navy be, and is hereby, authorized to print, in excess of the one thousand copies authorized by the Act of January twelfth, eighteen hundred and ninety-five, such extra copies of the publications of the Office of Naval Intelligence as may be necessary for distribution to the naval service and to meet other official demands: *Provided*, That in no case shall the edition of any one publication exceed two thousand copies. [31 Stat. L. 713.]

The provisions referred to in the text are given in PUBLIC PRINTING.

Joint Resolution Authorizing the printing of additional copies of the annual report upon the improvement and care of public buildings and grounds.

[Res. No. 30, of June 2, 1900, 31 Stat. L. 718.]

[*Report of public buildings and grounds in District of Columbia.*] That there be printed each year thereafter, in addition to the number of copies now authorized by law, two hundred additional copies of the annual report upon the improvement and care of public buildings and grounds, and the care and maintenance of the Washington Monument, in the District of Columbia, for the use of the officer in charge of public buildings and grounds. [31 Stat. L. 718.]

[SEC. 1.] [*Card indexes and other publications of Library of Congress.*] * * * The Librarian of Congress is hereby authorized to furnish to such institutions or individuals as may desire to buy them, such copies of the card indexes and other publications of the Library as may not be required for its ordinary transactions, and charge for the same a price which will cover their cost and ten per centum added, and all moneys received by him shall be deposited in the Treasury. * * * [32 Stat. L. 480.]

This is from the Sundry Civil Appropriation Act of June 28, 1902, ch. 1301.

Joint resolution to print and bind two thousand extra copies each of the drill regulations for infantry, cavalry and artillery.

[Res. No. 4, of Jan. 7, 1893, 27 Stat. L. 752.]

[*Drill regulations of army — extra copies for sale.*] That the Public Printer be, and he is hereby, authorized and directed to print from the stereotype plates and bind two thousand extra copies each of the drill regulations for infantry, cavalry and artillery, and sell the same at the cost price thereof to such persons connected with the militia or national guard of the States, and others, as may require their use. [27 Stat. L. 752.]

[Sec. 1.] [*Sale of post-route maps — proceeds.*] * * * And the Postmaster-General may authorize the sale of post-route maps to the public at the cost of printing and ten per centum thereof added, the proceeds of such sales to be used as a further appropriation for the preparation and publication of post-route maps. * * * [32 Stat. L. 167.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 504. A similar provision has appeared for many years in the appropriation acts.
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[*Commission to report on historical value of manuscripts, etc.*] * * * That the Secretary of State, the Librarian of Congress, and the Secretary of the Smithsonian Institution, and their successors in office, are hereby constituted a commission whose duty it shall be to report to Congress the character and value of the historical and other manuscripts belonging to the Government of the United States, and what method and policy should be pursued in regard to editing and publishing the same, or any of them. * * * [24 Stat. L. 542.]

This is from the Sundry Civil Appropriation Act of March 3, 1887, ch. 362.

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[I. THE GENERAL LAND OFFICE.]

Sec. 446. [*Commissioner of the General Land Office.*] There shall be in the Department of the Interior a Commissioner of the General Land-Office, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of four thousand dollars a year. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 717; Act of July 4, 1836, ch. 352, 5 Stat. L. 107; Act of March 3, 1873, ch. 226, 17 Stat. L. 508.

Sections 446-461 constitute chapter 3 (entitled as above) of title 11 (entitled "The Department of the Interior") of the Revised Statutes.

Compensation.—The salary of the commissioner has been increased by later appropriation acts. The Act of April 28, 1902, ch. 594, sec. 1, 32 Stat. L. 157, appropriates five thousand dollars for salary of commissioner.

Land office part of interior department.—The general land office is one of the working subdivisions of the department of the interior. *U. S. v. Schlierholz*, (1904) 133 Fed. Rep. 333.

Establishment of office.—The Act of April 25, 1812 (2 Stat. L. 716), establishing the general land office, put the office in the department of the treasury, and placed the commissioner under the direction of the head of that department. The Act of July 4, 1846 (5 Stat. L. 107), reorganizing the office, provided that the executive duties prescribed by law respecting the public lands should be subject to the supervision and control of the commissioner under the direction of the President. But the office still continued to be a part of the department of the treasury; and as the President acts in matters belonging to the departments through their respective heads, the immediate supervision over and direction of the commissioner remained

with the secretary after, as previous to, the reorganization. The Act of July 4, 1836 (5 Stat. L. 107), repealed such provisions of the original Act as were inconsistent with the new Act. But no other provisions were repealed which were not inconsistent. The continued direction of the commissioner and supervision over him by the secretary of the treasury, acting in all other cases under the President, as prescribed by the original Act, was not inconsistent with anything in the new Act. Such was the understanding and practice of the treasury department, until the department of the interior was established in 1849, when the land office was transferred to that department, and its secretary was required to "perform all the duties of supervision and appeal" in relation to that office, which had been previously discharged by the secretary of the treasury. *Patterson v. Tatum*, (1874) 3 Sawy. (U. S.) 164, 18 Fed. Cas. No. 10,830. See also *Snyder v. Sickles*, (1878) 98 U. S. 210.

The form of the repealing clause of the Act of July 4, 1836 (5 Stat. L. 107), implied that there were some provisions contained in the former laws which were not inconsistent with that Act. The provision of the Act of 1812, which made the general land office a branch of the treasury department, and thereby subjected it to the general superintendence of the President through the head of that department, was not inconsistent with the new Act, and therefore was not repealed by it. (1836) 3 Op. Atty-Gen. 137.

[SEC. 1.] [*Assistant Commissioner of General Land Office.*] * * * GENERAL LAND OFFICE: Assistant Commissioner, to be appointed by the President, by and with the advice and consent of the Senate, who shall be authorized to sign such letters, papers, and documents and to perform such other duties as may be directed by the Commissioner, and shall act as Commissioner in the absence of that officer or in case of a vacancy in the office of Commissioner, three thousand five hundred dollars; * * * [32 Stat. L. 157.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 514. Substantially the same provision has been repeated in the appropriation Acts of July 11, 1890, ch. 667, 26 Stat. L. 257; March 3, 1891, ch. 541, 26 Stat. L. 937; July 16, 1892, ch. 196, 27 Stat. L. 213; March 3, 1893, ch. 211, 27 Stat. L. 704; July 31, 1894, ch. 174, 28 Stat. L. 193; March 2,

1895, ch. 177, 28 Stat. L. 794; May 28, 1896, ch. 252, 29 Stat. L. 168; Feb. 19, 1897, ch. 265, 29 Stat. L. 567; March 15, 1898, ch. 68, 30 Stat. L. 305; Feb. 24, 1899, ch. 187, 30 Stat. L. 877; April 17, 1900, ch. 192, 31 Stat. L. 121; March 3, 1901, ch. 830, 31 Stat. L. 996; April 28, 1902, ch. 594, 32 Stat. L. 157.

Sec. 447. [*Recorder of General Land Office.*] There shall be in the General Land-Office an officer called the Recorder of the General Land-Office, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of two thousand dollars a year. [R. S.]

Act of July 4, 1836, ch. 352, 5 Stat. L. 111; Act of March 3, 1837, ch. 33, 5 Stat. L. 163, 164.

Two thousand dollars was the salary appropriated by the Act of Feb. 25, 1903, ch. 755, 32 Stat. L. 892.

Secs. 448, 449. [*Repealed.*]

These sections were as follows:

"SEC. 448. [*Principal clerks on private and public land-claims.*] There shall be in the General Land-Office a Principal Clerk of the Public Lands, and a Principal Clerk on Private Land-Claims, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall each be entitled to a salary of one thousand eight hundred dollars a year; and they shall perform such duties as may be assigned to them by the Commissioner of the General Land-Office. And the chief-clerk of the General Land-Office shall perform the duties of the Commissioner of the General Land-Office in case of a vacancy in said office, or of the absence or sickness of the Commissioner." Act of July 4, 1836, ch. 352, 5 Stat. L. 109.

"SEC. 449. [*Principal clerk of the surveys.*] There shall be in the General Land-Office a Principal Clerk of the Surveys, who shall be appointed by the President, by and with the advice and consent of the Senate; and shall be entitled to a salary of one thousand eight hundred dollars a year. He shall direct and superintend the making of surveys, the returns thereof, and all matters relating thereto, which are done through the officers of the Surveyor-General, and perform such other duties as may be assigned to him by the Commissioner of the General Land-Office." Act of July 4, 1836, ch. 352, 5 Stat. L. 110.

They were directly repealed by the Act of March 2, 1895, ch. 177, sec. 3, *infra*, p. 218.

Sec. 450. [*Secretary to the President to sign land patents.*] The President is authorized to appoint, from time to time, by and with the advice and consent of the Senate, a secretary, at a salary of one thousand five hundred dollars a year, whose duty it shall be, under the direction of the President, to sign in his name, and for him, all patents for land sold or granted under the authority of the United States. [R. S.]

Act of July 4, 1836, ch. 352, 5 Stat. L. 111. But see following text.

Engrossing clerk may sign President's name.—The Act of July 4, 1836, ch. 352, sec. 6, is sufficiently and legally complied with where the signature of the secretary is subscribed in his own proper handwriting, and the name of the President is written by the clerk who engrosses the patent. The intention of the law was to impose on the offi-

cer appointed as the Act requires the responsible duty of executing patents and of attesting their validity by his signature. The other duties in the execution of patents are purely ministerial, of which the form is prescribed by law; and whether they are performed by the clerk or by the secretary himself is immaterial. (1841) 3 Op. Atty.-Gen. 623.

[SEC. 1.] [*One of executive clerks to sign land patents.*] * * *
And the duties prescribed by section of the Revised Statutes numbered four hundred and fifty shall devolve upon and be discharged by one of the executive clerks, to be designated by the President for that purpose.
* * * [20 Stat. L. 183.]

This is from the Legislative, Executive, and Judicial Appropriation Act of June 19, 1878, ch. 329.

Effect of Act.—The above Act substitutes for the secretary, provided for in section 450 of the Revised Statutes, one of the executive clerks in the President's office, to be designated by the President. However, section 450 of the Revised Statutes is not wholly repealed, but only as much of it as is repugnant to the Act of June 19, 1878. The provision in respect to the duty of signing, for the President, his name to patents for land,

etc., is not repealed, but in respect to the officer who is to perform that duty it is repealed, as it is repugnant to the latter statute. There is no doubt that it was the intention of Congress that one of the President's clerks should perform the duties required by the secretary in section 450 of the Revised Statutes, and as the secretary's function was taken away, his office went with it. (1882) 17 Op. Atty.-Gen. 305.

Sec. 451. [*Assistant secretary to sign land patents.*] If at any time the number of patents for lands sold or granted under the authority of the United States, is such that they cannot be signed within a reasonable time by the secretary appointed under the preceding section, the President may appoint an assistant secretary to sign the same, but such assistant shall be employed by the express direction of the President, and only for such time as may be necessary to bring up the arrears of patents which may be ready for signature. [R. S.]

Act of Jan. 26, 1848, ch. 4, 9 Stat. L. 209.

The President has power to designate one of his executive clerks to sign for him, and in his name, all patents for land, etc., and if patents should accumulate, and the number be so large that they cannot be signed within a reasonable time, he is authorized to appoint an assistant to aid in the performance of the duties so long as the exigency exists. Langford's Claim, (1882) 17 Op. Atty.-Gen. 306.

"The President may appoint a private secretary, at a salary of two thousand five hundred dollars, under the Act of 1857, a

secretary to sign patents, at one thousand five hundred dollars, under the Act of 1836, and designate an assistant to the latter officer, under the Act of 1848." (1857) 9 Op. Atty.-Gen. 17.

A salaried clerk in the general land office is not entitled to additional compensation as assistant secretary to sign land patents by appointment of the President under the above Act, even though the patents were signed outside of the time which by the regulations of the department the appointee was required to devote to his duties as clerk. White's Case, (1863) 10 Op. Atty.-Gen. 442.

Sec. 452. [*Restriction upon officers, clerks, and employees.*] The officers, clerks, and employes in the General Land-Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from his office. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 717; Act of July 4, 1836, ch. 352, 5 Stat. L. 112.

Operation of Act on subsequent legislation.—Subsequent to the enactment of the above section, section 2319 of the Revised Statutes of the United States was passed, which provided that "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States, and those who have declared their intention to become such." Section 452 of the Revised Statutes has been retained in all of the provisions of the Revised Statutes made since its enactment. These sections are therefore *in pari materia*, and must be construed together, and, if possible, made to harmonize

and not to violate the general public policy which it is evident the former was enacted to prevent. The presumption is that Congress, when the latter Act was passed, was aware of the existence of the former, and acted in view of that fact. As the former section has not in terms been repealed, but has been retained in each of the revised editions of the United States statutes, it must be presumed that Congress intended it to remain in full force, notwithstanding the provisions of the latter section; or, in other words, it was the intention of Congress to prohibit, on the ground of public policy, the officers, clerks, and employees in the general land office from acquiring, directly or indirectly, an interest in the purchase from the government of any of the public lands of the United States. *Lavagnino v. Uhlig*, (1903) 26 Utah 1.

Sec. 453. [*Duties of Commissioner.*] The Commissioner of the General Land-Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 716; Act of July 4, 1836, ch. 352, 5 Stat. L. 107.

This section was amended by the Act of Feb. 18, 1875, ch. 80, 18 Stat. L. 317, by inserting after the words "patents for all" the word "grants" in place of the word

"agents" appearing in the section as originally enacted.

Jurisdiction of commissioner in general.—"In the absence of some specific provision to the contrary in respect to any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction

of the commissioner of the general land office, under the supervision of the secretary of the interior. It is not necessary that with each grant there shall go a direction that its administration shall be under the authority of the land department. It falls there unless there is express direction to the contrary." *Catholic Bishop v. Gibbon*, (1895) 158 U. S. 155.

Power to correct errors.—The commissioner of the general land office exercises a general superintendence over the subordinate officers of his department, and is clothed with liberal powers of control, to be exercised for the purposes of justice, and to prevent the consequences of inadvertence, irregularity, mistake, and fraud in the important and extensive operations of that officer for the disposal of the public domain. He has the power to correct a clerical mistake, the existence of which is shown plainly by the record. This is a necessary power in the administration of every department. *Bell v. Hearne*, (1856) 19 How. (U. S.) 252.

Seizure and sale of timber unlawfully cut.—The officers of the land department have authority to make seizure of timber unlawfully cut on the public lands. Authority to exercise this remedy in behalf of the United States must be deemed to belong to the commissioner of the general land office, under the supervision of the secretary of the interior, as a power included in the general duties respecting the public lands which are devolved upon him by the above section. Such authority has long been asserted and frequently exercised by the land department through its officers and agents, the latter acting under the instructions issued by the commissioner with the sanction of the secretary of the interior. As to the authority of the commissioner to dispose of such timber by public or private sale, where the same has been seized by duly authorized agents of the land department and remains in their custody, it is apprehended that this power exists subject to the general supervision and direction of the secretary of the interior. There being no statutory provision governing a case of that kind or regulating the disposal of the property, it must be regarded as a subject left to the land department to be dealt with in such manner as in the judgment of that department will best protect the interests of the government. As the property is perishable, and its custody may involve expense, it is not only within the power, but it is the duty of the department, for the avoidance of loss to the government, to convert the same into money; and whether this is done by public or private sale, is a matter entirely discretionary with it. While, ordinarily, the public interests (which are always to be kept in view) will be best subserved by a public sale after advertisement, yet there seems to be no objection, legal or other, to a private sale either with or without previous advertisement, where this mode of disposal is advantageous to the government, but as a general rule a public sale should be had. (1886) 18 Op. Atty-Gen. 434. See also (1890) 19 Op. Atty-Gen. 710.

General supervisory authority of secretary of interior.—The phrase, "under the direction of the secretary of the interior," as used in the above section and other sections of the Revised Statutes, was intended as an expression in general terms of the power of the secretary of the interior to supervise and control the extensive operations of the land department of which he is the head. It means that, in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents thereon, and the administration of trusts devolving upon the government by reason of the laws of Congress or under treaty stipulations, respecting the public domain, the secretary of the interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States. The general words of the above section and other sections of the Revised Statutes concerning the powers of the secretary of the interior are not supposed to particularize every minute duty devolving upon the secretary of the interior and every special power bestowed upon him. There must be some latitude for construction. The power of supervision and control exercised by the secretary of the interior over all matters relating to the disposition and sale of the public lands, under section 453 of the Revised Statutes, is substantially the same as his power over the bureau of pensions, under section 471. There is nowhere any express power given to the secretary of the interior to hear and determine appeals from the commissioner of pensions; and yet the power is exercised daily without question. The same remarks apply to the powers of the secretary of the interior, under a similarly worded section of the Revised Statutes (section 463), to supervise and control the management of the bureau of Indian affairs, which powers are not questioned. But even if there is any doubt of the existence of such power in the secretary of the interior, as an original proposition, still the exercise of it for so long a period—going back to the organization of that department—without question ought to be considered as conclusive as to the existence of the power. *Knight v. U. S. Land Assoc.*, (1891) 142 U. S. 161. See also *Hawley v. Diller*, (1900) 178 U. S. 476; *Warner Valley Stock Co. v. Smith*, (1897) 165 U. S. 28; *Stoneroad v. Stoneroad*, (1895) 158 U. S. 240; *Orchard v. Alexander*, (1895) 157 U. S. 372; *Hays v. Steiger*, (1888) 76 Cal. 555; *Altschul v. Clark*, (1901) 39 Oregon 315; *Lawrence v. Potter*, (1900) 22 Wash. 32; *McCord v. Hill*, (1901) 111 Wis. 499.

The power of supervision and control granted by the Act of July 4, 1836, although in terms extending only to executive duties, includes the right to review a decision of the local land officers as to the matter of settlement and improvement, *Harkness v. Underhill*, (1861) 1 Black (U. S.) 316; *Orchard v. Alexander*, (1895) 157 U. S. 372; especially in cases in which the proof before those officers is by *ex parte* affidavits, the approval or disapproval of the evidence offered in respect

to the settlement and improvement being quasi-judicial only. *Barnard v. Ashley*, (1855) 18 How. (U. S.) 43, *distinguishing and explaining Wilcox v. Jackson*, (1839) 13 Pet. (U. S.) 511; *Lytle v. Arkansas*, (1850) 9 How. (U. S.) 314.

Status of secretary of interior.—The secretary of the interior is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or disposed of to a party not entitled to it. He represents the government, which is a party in interest in every case involving the surveying and disposal of the public lands. *Knight v. U. S. Land Assoc.*, (1891) 142 U. S. 161.

As the commissioner is under the direction of the secretary of the interior, the first comptroller does not possess the power in every case where in his opinion further delay would be injurious to the United States, to direct the commissioner of the general land office forthwith to audit and settle any particular account which the commissioner may be authorized to audit and settle. (1886) 18 Op. Atty.-Gen. 450.

Extent of authority and mode of execution.—The supervision of the secretary of the interior may be exercised by direct orders or review on appeals. The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as the secretary may adopt when proceedings affecting the titles to lands are before the department. The power of supervision may be exercised by the secretary whether these proceedings are called to his attention by formal notice or appeal. It is sufficient that they are brought to his notice. The secretary of the interior may not only review his own decision prior to the passing of the legal title to the land in controversy, but may review a decision of his predecessor and set it aside if he is convinced that an error has been committed. An application for a rehearing may be made to a succeeding secretary, provided it could have been made to his predecessor who made the original decision, had he remained in office. *Beley v. Naphtaly*, (1898) 169 U. S. 353; *Gage v. Gunther*, (1902) 136 Cal. 338; *Warner Valley Stock Co. v. Smith*, (1896) 9 App. Cas. (D. C.) 187, *reversed* for lack of necessary parties, (1897) 165 U. S. 28; *Brown v. Bliss*, (1898) 13 App. Cas. (D. C.) 279. See also the cases in the preceding notes.

Power supervisory rather than appellate.—Both the secretary of the interior and the commissioner, in revising the acts of the subordinate officials of the land department, exercise supervisory rather than appellate power, in the sense in which the term appellate is employed in defining the powers of courts of justice. The secretary of the interior, in the exercise of such authority, may approve, modify, or annul the acts, proceedings, and decisions of the commissioners. If, however, this power is to be regarded as appellate power, in a legal sense, it will be

observed that the statute has not provided the machinery for the taking of an appeal; and consequently that matter is subject to such rules and regulations as the department may prescribe. *Hestres v. Brennan*, (1875) 50 Cal. 211.

Power to review his own decisions.—The supervisory authority thus given to the secretary of the interior is not lost by the fact that he has erred in a former decision, or that he has repeated the error once or many times by denying a motion to set it aside or to re-examine his action. *Gage v. Gunther*, (1902) 136 Cal. 345.

Rules may not divest supervisory power.—The authority of the secretary of the interior to review or set aside decisions cannot be taken away by any rule of procedure which he may formulate. There is no statutory inhibition against his granting a rehearing or a review, or the number of times a motion therefor may be made, or any provision relating to the time within which a rehearing may be granted, or within which the former decision may be set aside. Congress has imposed this supervisory duty upon him, and he cannot divest himself of it by any rule of his own creation. *Gage v. Gunther*, (1902) 136 Cal. 347.

Power to disregard rules.—Whether the circumstances in any particular case are such as to justify the secretary of the interior in disregarding the rules, or in refusing to disregard them, is a question of fact to be determined by him, and his determination thereon, like his decision of other questions of fact, is conclusive upon other tribunals. This rule is, however, subject to the qualification that the land department may not by such disregard of its rules deprive a party of an opportunity for a hearing upon the question before it. If, however, upon such subsequent hearing a full opportunity is afforded the parties for presenting the facts of their case, they cannot complain that by granting a review or rehearing of the case there was any misconstruction of the law by which they were deprived of any rights. *Gage v. Gunther*, (1902) 136 Cal. 346.

Vested rights may not be revoked.—The review of a decision after the passing of the legal title to land is unauthorized. *Noble v. Union River Logging R. Co.*, (1893) 147 U. S. 175; *Stimson Land Co. v. Rawson*, (1894) 62 Fed. Rep. 429. See also *Moore v. Robbins*, (1877) 96 U. S. 530; *Emblen v. Lincoln Land Co.*, (1899) 94 Fed. Rep. 710; *affirmed* (C. C. A. 1900) 102 Fed. Rep. 559; (1902) 184 U. S. 660.

Land department constitutes special tribunal—jurisdiction.—The land department of the United States, including in that term the secretary of the interior, the commissioner of the general land office, and their subordinate officers, constitutes a special tribunal, vested with judicial power to hear and determine the claims of all parties to the public lands which it is authorized to dispose of, and with power to execute its judgments by conveyances to the parties entitled to them. A patent of land within its jurisdiction, issued by the land department

is the judgment of that tribunal, and a conveyance of the legal title to the land to the patentee in execution of the judgment. When such a patent to land within the jurisdiction of the department is issued, it is, like the judgments of other judicial tribunals, impervious to collateral attack. The test of the jurisdiction of this tribunal is the true answer to the question, had the department the power to hear and determine the claims of the applicants of the land and to dispose of it in accordance with its decision? If that question can be answered in the affirmative, the land department had jurisdiction of the case, and the patent which evidences its decision conveys the legal title, and is impervious to collateral attack. If it must be answered in the negative, then its conveyance is void, and is as vulnerable in a collateral action at law as in a direct proceeding in equity to avoid it. *King v. McAndrews*, (C. C. A. 1901) 111 Fed. Rep. 860. See also *Germania Iron Co. v. James*, (C. C. A. 1898) 89 Fed. Rep. 811; *U. S. v. Winona, etc., R. Co.*, (C. C. A. 1895) 67 Fed. Rep. 948, *affirmed* (1897) 165 U. S. 463.

The land department is vested with jurisdiction to determine all questions of fact that may arise in any controversy respecting rights claimed by any person under the laws of the United States to receive a patent for any of the public lands. As a necessary result therefrom, the determination of this tribunal of any question of fact is conclusive upon all tribunals wherever such questions may be presented. The character of the land, whether it is subject to entry under the laws invoked therefor, the qualifications of the entryman, the extent of the improvement or reclamation made by him, whether such improvement is a sufficient compliance with the statutory provisions for entitling him to a patent, or whether it has been made within the time prescribed by statute, or, if not, whether the reasons offered by him are sufficient to condone such failure, or any default on his part, whether he has been guilty of laches, or exercised sufficient diligence, — are questions of fact to be submitted to and determined by the land department, and the issuance of a patent for the land is a final determination of that tribunal of the existence of all facts depending upon testimony which are necessary to entitle him to the patent, and, in the absence of fraud, mistake, or imposition, such facts are not subject to a re-examination in any other tribunal. If, however, in making such determination of facts, that tribunal has disregarded the law applicable thereto, or has erred in its construction of the law, or by reason of mistake has issued to one person a patent for the land which upon undis-

puted facts should have been issued to another who has contested his claim and has shown himself entitled to the patent, the person in whose favor the patent was issued will be held to hold the land for the benefit of the one to whom it should have issued. Proceedings for this purpose, are, however, to be taken in a court of equity, and are to be governed by the rules of equity procedure. *Gage v. Gunther*, (1902) 136 Cal. 338. See also *Carr v. Fife*, (1895) 156 U. S. 494; *Acers v. Snyder*, (1899) 8 Okla. 659.

Conclusiveness of survey confirmed by land department. — By the above section, full jurisdiction over the survey and sale of the public lands of the United States, and also in respect to private claims of land, is vested in the commissioner of the general land office, subject to the direction of the secretary of the interior. A survey made by the proper officers of the United States, and confirmed by the land department, is not open to challenge by any collateral attack in the courts. *Russell v. Maxwell Land Grant Co.*, (1895) 158 U. S. 253. See also *Cragin v. Powell*, (1888) 128 U. S. 691.

Matters of procedure before the land department — such as the regularity of its sittings, whether a paper was filed in accordance with its rules, whether a proper or sufficient notice of hearing upon any motion was given, whether the evidence before the tribunal was competent or proper to be considered — are questions of fact which, like the weight of the evidence, or the credibility of the witnesses before it, cannot, in the absence of fraud, be reviewed in any other forum. *Gage v. Gunther*, (1902) 136 Cal. 347.

Notice of a motion for the review of a decision of the secretary of the interior before that officer need not be served on the attorney of record of the adverse party. Service of notice upon the party himself is sufficient. The proceedings before the secretary in matters pertaining to the disposal of the public lands are not void by reason of failure to give notice to interested parties. The secretary has power to determine all such matters on his own motion, and mere irregularities will not render such proceedings void. *Acers v. Snyder*, (1899) 8 Okla. 659.

Power of land department to make rules and regulations. — By virtue of the above section and sections 441 and 2478 of the Revised Statutes, the land department has the power to adopt rules and regulations, including rules and regulations for the administration of the Forest Reserve Act, and the courts will take judicial notice of the rules and regulations made by the land department regarding the sale and exchange of public lands. *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, (1903) 190 U. S. 301.

Sec. 454. [*Custody of seal, books, records, etc.*] The Commissioner of the General Land-Office shall retain the charge of the seal heretofore adopted for the office, which may continue to be used, and of the records, books, papers, and other property appertaining to the office. [R. S.]

Sec. 455. [*Plats of lands surveyed.*] The Commissioner of the General Land-Office shall, when required by the President or either House of Congress, make a plat of any land surveyed under the authority of the United States, and give such information respecting the public lands and concerning the business of his office as shall be directed. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 717.

Sec. 456. [*Returns relative to lands.*] All returns relative to the public lands shall be made to the Commissioner of the General Land Office. [R. S.]

This section was amended to read as above by the Legislative, Executive, and Judicial Appropriation Act of July 31, 1894, ch. 174, sec. 7, 28 Stat. L. 207.

The section originally read as follows:

"Sec. 456. [*Returns and accounts relative to lands.*] All returns relative to the public lands shall be made to the Commissioner of the General Land-Office; and he shall have power to audit and settle all public accounts relative to the public lands; and upon the

settlement of any such account, he shall certify the balance, and transmit the account with the vouchers and certificate to the First Comptroller of the Treasury, for his examination and decision thereon." Act of April 25, 1812, ch. 68, 2 Stat. L. 717.

Provisions for the auditing and settlement of accounts are contained in other provisions of the amendatory Act above noted given under the title TREASURY DEPARTMENT.

Sec. 457. [*Warrants for military lands.*] In all cases in which land has heretofore or shall hereafter be given by the United States for military services, warrants shall be granted to the parties entitled to such land by the Secretary of the Interior; and such warrants shall be recorded in the General Land-Office, in books to be kept for the purpose, and shall be located as is or may be provided by law; and patents shall afterwards be issued accordingly. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 717.

Sec. 458. [*Issue of patents for lands.*] All patents issuing from the General Land-Office shall be issued in the name of the United States, and be signed by the President, and countersigned by the Recorder of the General Land-Office; and shall be recorded in the Office, in books to be kept for the purpose. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 717; Act of March 3, 1841, ch. 26, 5 Stat. L. 417.

Compliance with statute is imperative.— By the second section of the Act of March 3, 1841, the duty of countersigning patents was transferred from the commissioner of the general land office to the recorder. A patent for lands must be signed in the name of the President, either by himself or by his duly appointed secretary, sealed with the seal of the general land office and countersigned by the recorder. Until all these things have been done, the United States has not executed a patent for a grant of lands. Each and every one of the integral parts of the execution is essential to the perfection of the patent. They are of equal importance under the law, and one cannot be dispensed with more than the other. Neither is directory, but all are mandatory. Neither the signing nor the sealing nor the countersigning can be omitted. If either of the requisites to the due execution of a patent may be considered as directory, the countersigning by the recorder should not be permitted to occupy that position. The President may sign by his secretary, but the recorder must sign himself. He countersigns, that is to say, signs opposite to and after the President, by way of authentication. It is peculiarly ap-

propriate that his attestation should be the last act to be performed in the perfection of the instrument, and that he should do it personally. *McGarrahan v. New Idria Min. Co.*, (1877) 96 U. S. 316.

Presumed compliance with statute.— In *McLeod v. Lloyd*, (1903) 43 Oregon 260, it was held, under a statute which authorized the presumption of the performance of official duty, that where a patent is shown to have been recorded by an abstract of title, even if it is not countersigned by the recorder of the general land office, it may be presumed that it was countersigned in accordance with the above section.

The record of the patent is evidence of the grant, but not the grant itself. It is evidence of equal dignity with the patent, because, like the patent, it shows that a patent containing the grant has been issued. The record called for by the Act of Congress is made by copying the patent to be issued into the book kept for that purpose. The effect of the record, therefore, is to show that an instrument such as is there copied has actually been prepared for issue from the general land office. If the instrument as recorded is sufficient on its face to pass the title, it is to be presumed that the grant has actually been made; but if it is not sufficient, no pre-

sumption arises. In short, the record, for the purposes of evidence, stands in the same position and has the same effect as the instrument of which it purports to be a copy. The same defenses can be made against the record as could be made against the instrument recorded. The public records of the executive departments of the government are not, like those kept pursuant to ordinary registration laws, intended for notice, but for the preservation of the evidence of the transactions of the department. *McGarrahan v. New Idria Min. Co.*, (1877) 96 U. S. 316.

The failure to record the patent does not defeat the grant. — It only takes from the party one of the means of making his proof. If he can produce the patent itself, and that is executed with all the formalities required by the law, he can still maintain his rights under it. He is not, therefore, necessarily deprived of his title because of a defective record. He is in no worse condition with

the signatures omitted than he would have been if the description of his land had been erroneously copied, or other mistakes had been made which rendered the record useless for the purposes of evidence. A perfect record of a perfect patent proves the grant; but a perfect record of an imperfect patent, or an imperfect record of a perfect patent, has no such effect. In such a case, if a perfect patent has in fact issued, it must be proved in some other way than by the record. It is undoubtedly true that, when a right to a patent is complete and the last formalities of the law in respect to its execution and issue have been complied with by the officers of the government charged with that duty, the record will be treated as presumptive evidence of its delivery to and acceptance by the grantee. But until the patent is complete, it cannot properly be recorded, and consequently an incomplete record raises no such presumption. *McGarrahan v. New Idria Min. Co.*, (1877) 96 U. S. 316.

Sec. 459. [Duties of Recorder.] It shall be the duty of the Recorder of the General Land-Office, in pursuance of instructions from the Commissioner, to certify and affix the seal of the Office to all patents for public lands, and to attend to the correct engrossing, recording, and transmission of such patents. He shall prepare alphabetical indexes of the names of patentees, and of persons entitled to patents; and he shall prepare such copies and exemplifications of matters on file or recorded in the General Land-Office as the Commissioner may from time to time direct. Whenever the office of Recorder shall become vacant, or in case of his sickness or absence, the duties of his office shall be performed ad interim by the principal clerk on private land-claims. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 717; Act of July 4, 1836, ch. 352, 5 Stat. L. 111. See, however, provisions in the following text.

Sufficiency of acting recorder's signature. — Where the record in a case showed an instrument in the form of a patent signed in the name of the President and sealed, and it appeared that the place for the signature of the acting recorder was left blank and that the name of the President was signed by his secretary, a claim that the secretary also countersigned as acting recorder was not sustained by the evidence, as the secretary's signature appeared only as secretary and there was nothing whatever to indicate that he attempted to act as recorder. The court said: "It certainly is not to be presumed that the same person will hold at the same time the offices of secretary to the President for signing patents, and of principal clerk on private land claims. And if it were, his signature as secretary will not be treated as his signature as recorder *ad interim* or acting recorder. He must sign both as secretary and as recorder." *McGarrahan v. New Idria Min. Co.*, (1877) 96 U. S. 316.

Exclusive authority of recorder. — The duty and power of attesting and sealing patents for public lands belong exclusively to the recorder of the general land office. They form so material a part of his functions that the provision of the former law which devolved

them on the commissioner is inconsistent with the new law, and therefore repealed. (1836) 3 Op. Atty.-Gen. 140.

All patents issuing from the general land office, whether of land sold, or of lands in respect to which private claims are recognized by Acts of Congress as valid, or other lands, must be certified or countersigned by the recorder of the general land office. Attorney-General Butler said: "It is true that the fourth section of the Act of the 4th of July last, reorganizing the general land office, which prescribes the duties of the recorder, speaks, only of patents for 'public lands;' and it is therefore with much doubt and considerable hesitation that I have come to the above conclusion. But, after looking at the question on several different occasions, and reflecting very maturely upon it, I am obliged to say that, in my judgment, the phrase 'public lands,' as used in the fourth section, must be regarded as a comprehensive generic phrase, designed to include all lands the title to which is so circumstanced as to require for its complete transmission a patent from the United States. The words may well enough admit of this enlarged construction; and, unless we adopt it, the most important duties of the recorder, as prescribed by the Act, will be confined to those lands which are strictly 'public lands.'" (1836) 3 Op. Atty.-Gen. 167.

SEC. 3. [*Engrossing and recording of patents — duplication of returns to be prevented — principal clerks abolished — duties of Assistant Commissioner — reports of cases abolished.*] The engrossing and recording of patents for public lands may be done by means of typewriters or other machines, under regulations to be made by the Secretary of the Interior and approved by the President.

The duplication of reports and returns of registers and receivers to the General Land Office shall be prevented by such regulations as the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, may make.

Sections four hundred and forty-eight and four hundred and forty-nine of the Revised Statutes are repealed. Appropriations heretofore made for the salaries of the officers hereby abolished shall be available during the remainder of the fiscal year eighteen hundred and ninety-five for the pay of three chiefs of divisions, with such duties as the Commissioner of the General Land Office may assign to them. The duties imposed on the principal clerk of private land claims by section four hundred and fifty-nine of the Revised Statutes shall hereafter be performed by the Assistant Commissioner of the General Land Office.

Section twenty-four hundred and fifty-two of the Revised Statutes is repealed. [28 Stat. L. 807.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 2, 1895, ch. 177.

R. S. secs. 448, 449, above repealed, are set forth in the notes, *supra*, p. 211.

R. S. sec. 2452, above repealed, is set forth in the notes, *infra*, p. 524.

Sec. 460. [*Copies of papers filed in the Department.*] Whenever any person claiming to be interested in or entitled to land, under any grant or patent from the United States, applies to the Department of the Interior for copies of papers filed and remaining therein, in anywise affecting the title to such land, it shall be the duty of the Secretary of the Interior to cause such copies to be made out and authenticated, under his hand and the seal of the General Land-Office, for the person so applying. [R. S.]

Act of Jan. 23, 1823, ch. 6, 3 Stat. L. 721; Act of July 4, 1836, ch. 352, 5 Stat. L. 111.

Sec. 461. [*Fees for exemplifications of patents, etc.*] All exemplifications of patents or papers on file or of record in the General Land Office which may be required by parties interested shall be furnished by the Commissioner upon the payment by such parties at the rate of fifteen cents per hundred words, and thirty cents each for photolithographed copies of township plats or diagrams, unverified, not to exceed ten copies to any one person, and twenty-five cents each for all copies in excess of ten, with an additional sum of one dollar for the Commissioner's certificate of verification, with the General Land Office seal; and one of the employees of the office shall be designated by the Commissioner as the receiving clerk, and the amount so received shall, under the direction of the Commissioner, be paid into the Treasury; but fees shall not be demanded for such authenticated copies as may be required by the officers of any branch of the Government, nor for such unverified copies as the Commissioner, in his discretion, may deem proper to furnish. [R. S.]

This section was amended to read as above by the Act of April 2, 1888, ch. 54, 25 Stat. L. 76, entitled "An Act to amend section four hundred and sixty-one of the Revised Statutes, regulating fees for exemplifications of land patents, and for other purposes."

The section originally read as follows:
"Sec. 461. All exemplifications of patents or papers on file or of record in the General Land-Office, which may be required by parties interested, shall be furnished by the Commissioner upon the payment by such parties at

the rate of fifteen cents per hundred words, and two dollars for copies of township plats or diagrams, with an additional sum of one dollar for the Commissioner's certificate of verification with the General Land-Office seal; and one of the employes of the Office shall be designated by the Commissioner as the receiving clerk, and the amount so received

shall, under the direction of the Commissioner, be paid into the Treasury; but fees shall not be demanded for such authenticated copies as may be required by the officers of any branch of the Government, nor for such unverified copies as the Commissioner in his discretion may deem proper to furnish." Act of July 2, 1864, ch. 224, 13 Stat. L. 375.

An act to authorize the Secretary of the Interior to sell township maps or plats remaining on hand in his office.

[Act of Oct. 12, 1888, ch. 1098, 25 Stat. L. 557.]

[Sale of plats or maps.] That from and after the passage of this act the Secretary of the Interior, through the Commissioner of Public Lands, be, and he is hereby, authorized to sell the photolithographic township plats or maps of the States and Territories now remaining on hand in that Department to citizens of the United States at the following prices: Authenticated copies, fifty cents per copy; unauthenticated copies, twenty-five cents per copy; the proceeds of said sales to be covered into the Treasury of the United States by the Secretary of the Interior. [25 Stat. L. 557.]

[II. SURVEYORS AND DEPUTY SURVEYORS.]

Sec. 2207. [*Surveyors-general, how and where appointed.*] There shall be appointed by the President, by and with the advice and consent of the Senate, a surveyor-general for the States and Territories herein named, embracing, respectively, one surveying district, namely: Louisiana, Florida, Minnesota, Kansas, California, Nevada, Oregon, Nebraska and Iowa, Dakota, Colorado, New Mexico, Idaho, Washington, Montana, Utah, Wyoming, Arizona. [R. S.]

Act of March 3, 1823, ch. 29, 3 Stat. L. 755; Act of March 3, 1831, ch. 116, 4 Stat. L. 492; Act of Sept. 27, 1850, ch. 76, 9 Stat. L. 496; Act of March 3, 1853, ch. 145, 10 Stat. L. 244; Act of July 17, 1854, ch. 84, 10 Stat. L. 306; Act of July 22, 1854, ch. 103, 10 Stat. L. 308, 309; Act of Feb. 21, 1855, ch. 117, 10 Stat. L. 611; Act of March 3, 1857, ch. 107, 11 Stat. L. 212; Act of Feb. 28, 1861, ch. 59, 12 Stat. L. 176; Act of March 2, 1861, ch. 83, 12 Stat. L. 214; Act of March 2, 1861, ch. 86, 12 Stat. L. 244; Act of June 29, 1866, ch. 156, 14 Stat. L. 77; Act of July 4, 1866, ch. 166, 14 Stat. L. 85; Act of July 28, 1866, ch. 311, 14 Stat. L. 344; Act of March 2, 1867, ch. 179, 14 Stat. L. 542; Act of July 16, 1868, ch. 175, 15 Stat. L. 91; Act of Feb. 5, 1870, ch. 14, 16 Stat. L. 65; Act of July 11, 1870, ch. 246, 16 Stat. L. 230; Act of May 8, 1872, ch. 140, 17 Stat. L. 76.

Secs. 2207-2490 constitute title 32 of the

Revised Statutes, entitled "The Public Lands."

Sections 2207-2233 constitute ch. 1 of such title entitled as above.

Alaska, surveyor-general. See ALASKA, vol. 1, pp. 23, 44.

Kansas, office of surveyor-general abolished. See Act of July 31, 1876, ch. 246, *infra*, p. 219.

Nebraska and Iowa, office of surveyor-general abolished. See Act of Oct. 2, 1888, ch. 1069, *infra*, p. 220.

North Dakota and South Dakota, office of surveyor-general established. See Act of April 10, 1890, ch. 77, *infra*, p. 220.

Consolidation of offices. See Act of March 3, 1893, ch. 211, sec. 1, *infra*, p. 220.

The office of surveyor-general was created by the Act of May 18, 1796, ch. 29. The Carondelet Case, (1873) 9 Ct. Cl. 455, 458.

[*Office of surveyor-general of Kansas abolished.*] * * * and the office of the surveyor-general of Kansas is hereby abolished from and after the thirtieth of September next * * * [19 Stat. L. 121.]

This is from the Sundry Civil Appropriation Act of July 31, 1876, ch. 246.

[*Office of surveyor-general for Nebraska and Iowa abolished.*]
* * * and the office of surveyor-general for the district of Nebraska
and Iowa is hereby abolished: * * * [25 Stat. L. 525.]

This is from the Sundry Civil Appropriation Act of Oct. 2, 1888, ch. 1069.

An act to create the offices of surveyor-general in the States of North Dakota and
South Dakota.

[Act of April 10, 1890, ch. 77, 26 Stat. L. 53.]

[SEC. 1.] [*Surveyors-general for North Dakota and South Dakota.*]
That there shall be appointed by the President, by and with the advice
and consent of the Senate, a surveyor-general each for the States of
North Dakota and South Dakota, embracing, respectively, one surveying
district. [26 Stat. L. 53.]

SEC. 2. [*Salaries.*] That the surveyors-general of North Dakota and
South Dakota shall each receive a salary at the rate of two thousand
dollars per annum. [26 Stat. L. 53.]

[SEC. 1.] [*Consolidation of offices of surveyors-general.*] * * * That
hereafter the Secretary of the Interior be, and he is hereby, authorized and
directed, whenever practicable, to consolidate the offices of two or more surveyor-
generals into one office, and in cases of such consolidation, in the discretion of
the Secretary, the surveyor-general appointed in charge of a consolidated office
may be paid a salary not exceeding two thousand five hundred dollars per
annum, from the sums appropriated respectively for the salaries of the sur-
veyors-general whose offices may be consolidated hereunder. [27 Stat. L. 709.]
Stat. L. 709.]

This is from the Legislative, Executive, and
Judicial Appropriation Act of March 3, 1893,
ch. 211.

Salaries. — See note under following sec-
tion.

Sec. 2208. [*Salary of, in Louisiana, Florida, Minnesota, Nebraska, Iowa,
and Dakota.*] The surveyors-general of Louisiana, Florida, Minnesota, Kansas,
Nebraska and Iowa, and of Dakota Territory, shall each receive a salary at the
rate of two thousand dollars a year. [*R. S.*]

Act of March 3, 1823, ch. 29, 3 Stat. L.
755; Act of March 3, 1831, ch. 116, 4 Stat.
L. 493; Act of March 2, 1861, ch. 86, 12
Stat. L. 244; Act of May 8, 1872, ch. 140,
17 Stat. L. 76.

The offices of surveyor-general of Kansas,
Nebraska, and Iowa are abolished, and the
appointment of and salaries for surveyors-
general for North Dakota and South Dakota
provided for by acts set out above.

Salaries of the surveyors-general have
varied under the appropriation acts. The

Legislative, Executive, and Judicial Approp-
riation Act of April 28, 1902, ch. 594, 32
Stat. L. 162, provides for salaries of sur-
veyors-general, as follows: Alaska, \$4,000;
Arizona, \$2,000; California, \$2,000; Colo-
rado, \$2,000; Florida, \$1,800; Idaho, \$2,000;
Louisiana, \$1,800; Minnesota, \$1,800; Mon-
tana, \$2,000; Nevada, \$1,800; New Mexico,
\$2,000; North Dakota, \$2,000; Oregon,
\$2,000; South Dakota, \$2,000; Utah, \$2,000;
Washington, \$2,000; Wyoming, \$2,000.

Sec. 2209. [*Salary of, in Oregon and Washington.*] The surveyors-general
of Oregon and of Washington shall each receive a salary at the rate of two thou-
sand five hundred dollars a year. [*R. S.*]

Act of Sept. 27, 1850, ch. 76, 9 Stat. L.
496; Act of Feb. 14, 1853, ch. 69, 10 Stat. L.
158; Act of March 3, 1853, ch. 145, 10 Stat.
L. 248; Act of July 17, 1854, ch. 84, 10 Stat.
L. 306; Act of March 3, 1855, ch. 175, 10

Stat. L. 674; Act of May 30, 1862, ch. 86,
12 Stat. L. 410; Act of May 8, 1872, ch. 140,
17 Stat. L. 76.

Salaries. — See note under R. S. sec. 2208,
supra.

Sec. 2210. [*Salary of, in Colorado, New Mexico, California, Idaho, Nevada, Montana, Utah, Wyoming, and Arizona.*] The surveyors-general of Colorado, New Mexico, California, Idaho, Nevada, Montana, Utah, Wyoming, and Arizona, shall each receive a salary at the rate of three thousand dollars a year. [R. S.]

Act of March 3, 1853, ch. 145, 10 Stat. L. 244; Act of July 22, 1854, ch. 103, 10 Stat. L. 308; Act of Feb. 21, 1855, ch. 117, 10 Stat. L. 611; Act of Feb. 28, 1861, ch. 59, 12 Stat. L. 176; Act of March 2, 1861, ch. 83, 12 Stat. L. 214; Act of May 30, 1862, ch. 86, 12 Stat. L. 410; Act of June 29, 1866, ch. 156, 14 Stat. L. 77; Act of July 4, 1866, ch.

166, 14 Stat. L. 85; Act of March 2, 1867, ch. 179, 14 Stat. L. 542; Act of July 16, 1868, ch. 175, 15 Stat. L. 91; Act of Feb. 5, 1870, ch. 14, 16 Stat. L. 65; Act of July 11, 1870, ch. 246, 16 Stat. L. 230; Act of May 8, 1872, ch. 140, 17 Stat. L. 76.

Salaries.—See note under R. S. sec. 2208, *supra*.

Sec. 2211. [*Salary of, in Florida, Oregon, and California, how and from what time payable.*] The salary of each surveyor-general of Florida, Oregon, and California shall be paid quarter-yearly, and shall commence from the time he enters into bond, as provided by law. [R. S.]

Act of March 3, 1823, ch. 29, 3 Stat. L. 756; Act of Sept. 27, 1850, ch. 76, 9 Stat.

L. 496; Act of March 3, 1853, ch. 145, 10 Stat. L. 244.

Salaries.—See note under R. S. sec. 2208.

Sec. 2212. [*Offices, number and location of.*] There shall be but one office of surveyor-general in each surveyor-general's district; and such office shall be located as the President, in view of the public convenience, may from time to time direct, except as provided in the following section. [R. S.]

Act of July 2, 1864, ch. 210, 13 Stat. L. 352.

Sec. 2213. [*Offices, location of, in Minnesota, Idaho, Nebraska, and Iowa.*] The surveyor-general's office for Minnesota district shall continue to be located at the city of Saint Paul; that for Idaho Territory, at Boise City; and that for the district of Nebraska and Iowa, at Plattsmouth, in Nebraska. [R. S.]

Act of March 3, 1867, ch. 107, 11 Stat. L. 212; Act of June 29, 1866, ch. 156, 14 Stat. L. 77; Act of July 28, 1866, ch. 311; 14 Stat. L. 344.

Office abolished in Nebraska and Iowa. See Act of Oct. 2, 1888, ch. 1069, *supra*, p. 220.

Sec. 2214. [*Residence of surveyor-general.*] Every surveyor-general, while in the discharge of the duties of his office, shall reside in the district for which he is appointed. [R. S.]

Act of March 3, 1843, ch. 100, 5 Stat. L. 637.

Sec. 2215. [*Bond of surveyor-general.*] Every surveyor-general shall, before entering on the duties of his office, execute and deliver to the Secretary of the Interior a bond, with good and sufficient security, for the penal sum of thirty thousand dollars, conditioned for the faithful disbursement, according to law, of all public money placed in his hands, and for the faithful performance of the duties of his office. [R. S.]

Act of May 7, 1822, ch. 118, 3 Stat. L. 697.

The form of the bond required is impliedly left by Congress to be regulated or fixed by the officer by whom it is to be approved. (1885) 18 Op. Atty.-Gen. 275.

The omission of one condition, where the conditions are cumulative, cannot invalidate the bond. *Farrar v. U. S.*, (1831) 5 Pet. (U. S.) 372, *followed in* *U. S. v. Bradley*, (1836) 10 Pet. (U. S.) 343.

Conditions precedent to holding of office.—

"The person appointed to the office of surveyor-general is required to give a bond and take an oath before he can possess the office. These acts constitute conditions precedent to the holding of the office." *People v. Whitman*, (1858) 10 Cal. 38, *following* *U. S. v. Le Baron*, (1856) 19 How. (U. S.) 73.

Surveyors are disbursing officers within the contemplation of the law. *Farrar v. U. S.*, (1831) 5 Pet. (U. S.) 372.

Identity of "surveyor" and "surveyor-

general" — The Act of May 7, 1822, ch. 118, sec. 3, requiring the surveyor-general to give bond, applied to a surveyor appointed under the Act of April 29, 1816, ch. 151, notwithstanding the fact that under a literal construction of the laws then in force there was only one surveyor-general, as Congress had repeatedly used the terms interchangeably. *Farrar v. U. S.*, (1831) 5 Pet. (U. S.) 372. On the question of identity, see also *U. S. v. Lytle*, (1849) 5 McLean (U. S.) 9, 26 Fed. Cas. 15,652.

Surety's liability when principal's district enlarged. — The treasury department cannot

enlarge the district of a surveyor-general, but where such district depends upon the construction of various Acts of Congress, and those acts have been uniformly construed one way, and such construction has been repeatedly sanctioned by legislative action, it must be considered as conclusive on the judiciary. And where such construction had been fixed for years, a security to a surveyor-general's bond cannot set up in defense, as a bar to a suit on the bond, that the duties as performed were beyond the proper limits of the surveyor-general's district. *U. S. v. Lytle*, (1849) 5 McLean (U. S.) 9.

Sec. 2216. [*New bond of, and additional security.*] The President is authorized, whenever he may deem it expedient, to require any surveyor-general to give a new bond and additional security, under the direction of the Secretary of the Interior, for the faithful disbursement, according to law, of all money placed in his hands. [*R. S.*]

Act of May 7, 1822, ch. 118, 3 Stat. L. 697.

Sec. 2217. [*Duration of office.*] The commission of every surveyor-general now in office, and of every surveyor-general hereafter appointed, shall cease and expire, unless sooner vacated by death, resignation, or removal from office, in four years from the date of the commission. [*R. S.*]

Act of May 7, 1822, ch. 118, 3 Stat. L. 697.

Sec. 2218. [*Completion of surveys, delivery of field-notes, etc.*] The Secretary of the Interior shall take all the necessary measures for the completion of the surveys in the several surveying-districts for which surveyors-general have been, or may be, appointed, at the earliest periods compatible with the purposes contemplated by law; and whenever the surveys and records of any such district are completed, the surveyor-general thereof shall be required to deliver over to the secretary of state of the respective States, including such surveys, or to such other officer as may be authorized to receive them, all the field-notes, maps, records, and other papers appertaining to land titles within the same; and the office of surveyor-general in every such district shall thereafter cease and be discontinued. [*R. S.*]

Act of June 12, 1840, ch. 36, 5 Stat. L. 384.

Sec. 2219. [*Devolution of surveyor-general's powers upon Commissioner of Land Office, when.*] In all cases where, as provided in the preceding section, the field-notes, maps, records, and other papers appertaining to land-titles in any State are turned over to the authorities of such State, the same authority, powers, and duties in relation to the survey, resurvey, or subdivision of the lands therein, and all matters and things connected therewith, as previously exercised by the surveyor-general, whose district included such State, shall be vested in, and devolved upon, the Commissioner of the General Land-Office. [*R. S.*]

Act of Jan. 22, 1853, ch. 24, 10 Stat. L. 152.

Sec. 2220. [*Free access to field-notes, etc., delivered to States.*] Under the authority and direction of the Commissioner of the General Land-Office, any deputy surveyor or other agent of the United States shall have free access to any such field-notes, maps, records, and other papers, for the purpose of taking

extracts therefrom, or making copies thereof, without charge of any kind. [R. S.]

Act of Jan. 22, 1853, ch. 24, 10 Stat. L. 152.

Sec. 2221. [*Conditions of delivery of field-notes to the States.*] The field-notes, maps, records, and other papers mentioned in section twenty-two hundred and nineteen, shall in no case be turned over to the authorities of any State, until such State has provided by law for the reception and safe-keeping of the same as public records, and for the allowance of free access to the same by the authorities of the United States. [R. S.]

Act of Jan. 22, 1853, ch. 24, 10 Stat. L. 152.

[*Transfer to Nebraska and Iowa of records of land surveys — safe keeping of, and access to, records.*] * * * That the Secretary of the Interior be, and is hereby, authorized to transfer to the Secretary of state of the States of Nebraska and Iowa, or to such officers as may be entitled to receive them, the field-notes, maps, records, and other papers appertaining to land surveys in said States which are now stored in the district land-office at Lincoln, Nebraska; and the office of surveyor-general for the district of Nebraska and Iowa is hereby abolished: *Provided*, That the aforesaid field-notes, maps, records, and other papers pertaining to the State of Nebraska shall not be delivered to the proper authorities until said State shall have provided by law for the safe keeping of the same as public records, and for the allowance of free access to field-notes, maps, records, and other papers by the authorities of the United States, as provided by section twenty-two hundred and twenty-one of the Revised Statutes of the United States, the State of Iowa having heretofore enacted the requisite legislation. * * * [25 Stat. L. 525.]

This is from the Sundry Civil Appropriation Act of Oct. 2, 1888, ch. 1069.

Sec. 2222. [*Continuance of duties after expiration of commission.*] Every surveyor-general, register, and receiver, except where the President sees cause otherwise to determine, is authorized to continue in the uninterrupted discharge of his regular official duties, after the day of expiration of his commission, and until a new commission is issued to him for the same office, or until the day when a successor enters upon the duties of such office; and the existing official bond of any officer so acting shall be deemed good and sufficient, and in force, until the date of the approval of a new bond to be given by him, if recommissioned, or otherwise, for the additional time he may so continue officially to act, pursuant to the authority of this section. [R. S.]

Act of March 3, 1853, ch. 145, 10 Stat. L. 247.

Sec. 2223. [*General duties of surveyors-general.*] Every surveyor-general shall engage a sufficient number of skillful surveyors as his deputies, to whom he is authorized to administer the necessary oaths upon their appointments. He shall have authority to frame regulations for their direction, not inconsistent with law or the instructions of the General Land-Office, and to remove them for negligence or misconduct in office.

Second. He shall cause to be surveyed, measured, and marked, without delay, all base and meridian lines through such points and perpetuated by such monuments, and such other correction parallels and meridians as may be pre-

scribed by law or by instructions from the General Land-Office, in respect to the public lands within his surveying-district, to which the Indian title has been or may be hereafter extinguished.

Third. He shall cause to be surveyed all private land-claims within his district after they have been confirmed by authority of Congress, so far as may be necessary to complete the survey of the public lands.

Fourth. He shall transmit to the register of the respective land-offices within his district general and particular plats of all lands surveyed by him for each land-district; and he shall forward copies of such plats to the Commissioner of the General Land-Office.

Fifth. He shall, so far as is compatible with the desk-duties of his office, occasionally inspect the surveying operations while in progress in the field, sufficiently to satisfy himself of the fidelity of the execution of the work according to contract, and the actual and necessary expenses incurred by him while so engaged shall be allowed; and where it is incompatible with his other duties for a surveyor-general to devote the time necessary to make a personal inspection of the work in progress, then he is authorized to depute a confidential agent to make such examination; and the actual and necessary expenses of such person shall be allowed and paid for that service, and five dollars a day during the examination in the field; but such examination shall not be protracted beyond thirty days; and in no case longer than is actually necessary; and when a surveyor-general, or any person employed in his office at a regular salary, is engaged in such special service, he shall receive only his necessary expenses in addition to his regular salary. [R. S.]

Act of May 18, 1796, ch. 29, 1 Stat. L. 464; Act of April 29, 1816, ch. 151, 3 Stat. L. 325; Act of March 3, 1831, ch. 116, 4 Stat. L. 492; Act of March 3, 1853, ch. 145, 10 Stat. L. 245, 247.

Basis of United States system of surveys. — "The Act of May 18, 1796, the first to authorize a sale of the domain ceded by Virginia, is the basis of our present rectangular system of surveys. That Act required every surveyor to note in his field-book the true situation of all mines, salt licks, and salt springs, and reserves for the future disposal of the United States a well-known salt spring on the Scioto river, and every other salt spring which should be discovered." *Morton v. Nebraska*, (1874) 21 Wall. (U. S.) 660.

The rule of conduct for all surveyors-general and their deputies, prescribed by the Act of May 8, 1796, ch. 29, is continued in all the subsequent statutes on the subject. *Morton v. Nebraska*, (1874) 21 Wall. (U. S.) 660.

Power to appoint deputies. — Prior to the Act of May 30, 1862, sec. 86, the surveyor-general had by law general authority to contract with his deputies, and it was not necessary that the instructions of his superior, the commissioner of the general land office, should be made a part of the contract or that the contract should be approved by the commissioner. *McKee's Case*, (1865) 1 Ct. Cl. 336.

And the surveyor had the power to fix the compensation of his deputies by contract with them, provided that the whole expense of surveying did not exceed three dollars per mile. While the law made it the duty of

the surveyor to fix the compensation of the deputy surveyors, chaincarriers, and axemen, the government sanctioned an arrangement whereby the surveyor made a contract with the deputy for the entire work, permitting the latter to choose his chaincarriers and axemen. (1824) 1 Op. Atty-Gen. 661.

Conclusiveness of survey. — There is nothing in the statute that requires the approval of the commissioner of the general land office before a surveyor-general's survey of public land becomes final and the plats made by him authoritative. When the survey is correct, it becomes final and effective when it is filed in the local land office by the surveyor. *Fraser v. O'Connor*, (1885) 115 U. S. 102; *Tubbs v. Wilhoit*, (1891) 138 U. S. 134.

Survey necessary to sever land from public domain. — Land pre-empted is not severed from the public domain until the surveyor-general files the plat and notice with the recorder of land titles; and this is true though the pre-emptor has done everything required of him by law, and is without legal means to compel the surveyor-general to perform the duty imposed on him by statute. *Hot Springs Cases*, (1874) 10 Ct. Cl. 289, 373.

"Lands subject to equitable claims within the territory acquired by the United States from Spain under the treaty of 1819, requiring survey and confirmation by the United States, are, until the approved survey, confirmation, or patent issued, part of the public domain." *Perkins v. Vincent*, (1895) 47 La. Ann. 579.

Surveyor-general's approval of plats. — The surveyor-general's approval of plats of land surveyed is a sufficient authentication of both the survey and the plats. No indispensable

form of approval has been prescribed. The substance and spirit of the whole policy in respect to approvals is that the surveyor shall not only cause the land to be surveyed and platted, but shall see to it and satisfy himself that the plats correspond with the field notes, and when satisfied transmit the plats to the proper offices. (1841) 3 Op. Atty.-Gen. 697.

Survey beyond surveyor's jurisdiction.—Under the provisions of the Act of March 3, 1831, ordering the appointment of a surveyor-general of the state of Louisiana, on whom should devolve the duties in that state formerly imposed on the surveyor of lands south of Tennessee, it was held that a survey approved by the latter official, after the termination of his authority, was invalid as against a survey made by the new official. *Jourdan v. Barrett*, (1846) 4 How. (U. S.) 169.

Survey of land in Louisiana Purchase.—Congress, in providing for the confirmation of the title to land included in the Louisiana

Purchase and held by claimants under valid French or Spanish grants, also provided that the limits of each grant should be definitely ascertained before final confirmation; and it was within the scope of the duties of the surveyor-general to make the necessary surveys for such purpose. *Menard v. Massey*, (1850) 8 How. (U. S.) 293; *West v. Cochran*, (1854) 17 How. (U. S.) 403; *Maguire v. Tyler*, (1869) 8 Wall. (U. S.) 650.

Resurvey by "confidential agent."—When the land department sets aside a survey because it does not conform to the decree of confirmation, and orders the surveyor-general to cause a new survey to be made, it seems that he may, under the provisions of Act of March 3, 1853, ch. 145, sec. 10, depute a "confidential agent" to make a personal examination of the land, and report upon the correctness of the survey and its conformity with the calls mentioned in the decree. *U. S. v. Hancock*, (1887) 30 Fed. Rep. 855.

Sec. 2224. [*Seals of surveyors-general of California, Oregon, and Louisiana; transcripts from records of.*] The official seals heretofore authorized to be provided for the offices of the surveyors-general of Oregon, California, and Louisiana shall continue to be used; and any copy of or extract from the plats, field-notes, records, or other papers on file in those offices, respectively, when authenticated by the seal and signature of the proper surveyor-general, shall be evidence in all cases in which the original would be evidence. [R. S.]

Act of March 3, 1853, ch. 145, 10 Stat. L. 245, 248.

Authentication of records in register's office.—The records which the surveyor-general may authenticate for evidential purposes

are only those on file in his office. Hence, when the register is custodian of a map, he, and not the surveyor-general, is the proper official to give a certified copy thereof. *Goodwin v. McCabe*, (1888) 75 Cal. 584.

Sec. 2225. [*Transcripts from records of Louisiana.*] Any copy of a plat of survey, or transcript from the records of the office of surveyor-general of Louisiana, duly certified by him, shall be admitted as evidence in all the courts of the United States and the Territories thereof. [R. S.]

Act of March 3, 1831, ch. 116, 4 Stat. L. 493.

Sec. 2226. [*Clerk-hire, allowance of, to surveyors-general.*] There shall be allowed for the offices of the several surveyors-general, for clerk-hire therein, such sums as may be appropriated for the purpose by Congress from year to year. [R. S.]

Sec. 2227. [*Office-rent, allowance of, to surveyors-general.*] There shall be allowed for office-rent, fuel, books, stationery, and other incidental expenses of the several offices of surveyors-general such sums as may be appropriated for the purpose by Congress, from year to year. [R. S.]

[SEC. 1.] [*Fund available for stationery, rent, etc.*] * * * That the stationery and drafting instruments hereafter purchased for exclusive use in the offices of the surveyors-general in the preparation of plats and field notes of mineral surveys, as also the rent of additional quarters that may be necessary for the execution of such work, shall be paid for out of the fund created by deposits

made by individuals to the credit of the United States to cover the cost of office work on such mineral surveys. * * * [31 Stat. L. 1003.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1901, ch. 830.

Sec. 2228. [*Duties of register and receiver performed by surveyor-general.*] The President is authorized, in any case where he thinks the public interest may require it, to transfer the duties of register and receiver in any district to the surveyor-general of the surveying-district in which such land-district is located. [R. S.]

Act of May 30, 1862, ch. 86, 12 Stat. L. 410.

Sec. 2229. [*Official papers, etc., in office of surveyor-general of California; copies thereof.*] All official books, papers, instruments of writing, documents, archives, official seals, stamps, or dies, which have been heretofore authorized by law to be collected and deposited in the surveyor-general's office in California, shall be safely and securely kept by such surveyor-general in the archives of his office; and copies thereof, authenticated by the surveyor-general under his seal of office, shall be evidence in all cases where the originals would be evidence. [R. S.]

Act of May 18, 1858, ch. 39, 11 Stat. L. 289.

Sec. 2230. [*Bond of deputy surveyor.*] Every deputy-surveyor shall enter into bond, with sufficient security, for the faithful performance of all surveying contracts confided to him; and the penalty of the bond, in each case, shall be double the estimated amount of money accruing under such contracts, at the rate per mile stipulated to be paid therein. The sufficiency of the sureties to all such bonds shall be approved and certified by the proper surveyor-general. [R. S.]

Act of March 3, 1831, ch. 116, 4 Stat. L. 493; Act of March 3, 1853, ch. 145, 10 Stat. L. 247.

Sec. 2231. [*Oath of deputy surveyor.*] The surveyors-general, in addition to the oath now authorized by law to be administered to deputies on their appointment to office, shall require each of their deputies, on the return of his surveys, to take and subscribe an oath that those surveys have been faithfully and correctly executed, according to law and the instructions of the surveyor-general. [R. S.]

Act of Aug. 8, 1846, ch. 106, 9 Stat. L. 79.

Sec. 2232. [*Suit on bond of deputy surveyor—lien of.*] The district attorney of the United States, in whose district any false, erroneous, or fraudulent surveys have been executed, shall, upon the application of the proper surveyor-general, immediately institute suit upon the bond of such deputy; and the institution of such suit shall act as a lien upon any property owned or held by such deputy, or his sureties, at the time such suit was instituted. [R. S.]

Act of Aug. 8, 1846, ch. 106, 9 Stat. L. 79.

Sec. 2233. [*Penalty for default of deputy.*] In the event of the failure of a deputy in Louisiana to comply with the terms of his contract, unless such failure be satisfactorily shown by him to have arisen from causes beyond his control, he shall forfeit the penalty of his bond on due process of law, and ever afterward be debarred from receiving a contract for surveying public lands. [R. S.]

Act of March 3, 1831, ch. 116, 4 Stat. L. 493.

[III. REGISTERS AND RECEIVERS.]

Sec. 2234. [*Appointment of registers and receivers — their duties — liability on bond.*] There shall be appointed by the President, by and with the advice and consent of the Senate, a register of the land office and a receiver of public moneys for each land district established by law, who shall have charge of and attend to the sale of public and Indian lands within their respective districts, as provided by law and official regulations, and receivers shall be accountable under their official bonds for the proceeds of such sales, and for all fees, commissions, or other moneys received by them under any provision of law or official regulation. [R. S.]

See all Acts establishing land districts.

This section was amended to read as above by the Act of Jan. 27, 1898, ch. 10, 30 Stat. L. 234. The amendment consists in the addition of all matter after the words "for each land district established by law."

"The House committee in reporting the bill, said (H. R. Rep. 132): 'Under the recent decision of the United States courts it has been held that the sureties on receivers' bonds are not liable or responsible to the United States if their principals fail to pay over or account for the proceeds of sales of Indian lands. By the passage of this bill the provisions of such bonds must cover such funds or proceeds of sales of such lands.'" *Compilers' note, 2 Supp. R. S. 725.*

Sections 2234-2247 constitute chapter 2 (entitled as above) of title 32 of the Revised Statutes.

Appointment of receivers. — See further, special acts creating land districts, *infra*, div. IV.

When register may act by deputy. — A mere ministerial or clerical duty of a register may, as in the case of public officers generally, be performed by a deputy, but a judicial act may not. *Hunter v. Hemphill*, 6 Mo. 106.

Obligors strictly accountable. — The obligors on an official bond of a receiver of public moneys should be held to a strict accountability. *Meads v. U. S.*, (C. C. A. 1897) 81 Fed. Rep. 684.

The liability of a surety is not to be extended by implication beyond the terms of his contract. His undertaking is to receive a strict interpretation and is not to extend beyond the fair scope of its terms. *U. S. v. Boyd*, (1841) 15 Pet. (U. S.) 187.

Departmental regulations affecting liability. — Regulations duly promulgated by the land department have the force of law, in a limited sense, especially when authorized or approved by Congress; but after a receiver has given his official bond, it is not competent to enlarge or restrict by such regulations the rights or obligations arising from the bond as determined by law at the time of its execution. *Meads v. U. S.*, (C. C. A. 1897) 81 Fed. Rep. 684.

Liability for money collected by agent. — "If a public officer sees fit to allow the money of the government to be paid, during his absence from his office, into the hands of

his agent, it is a good payment to him, and the risk is with him and his sureties and not with the government." Hence it is no defense to an action on a receiver's official bond that the moneys were paid, not to him, but to his assistant or cashier. *Potter v. U. S.*, (1882) 107 U. S. 126.

Bond covers military bounty-land warrants. — It is the duty of a register of a land office to receive the register's fees from the locators of military bounty-land warrants, upon their being located on the public lands subject to private entry by such warrants. If the register receives such fees, his neglect and refusal to pay over to the United States the surplus beyond the compensation to which he is entitled by law is a breach of the condition of his official bond, both as respects himself and the securities on the bond, and the United States is under no necessity of proceeding against the principal on the bond by an action for money had and received, but may proceed directly on the bond. *U. S. v. Babbitt*, (1877) 95 U. S. 334.

Bond covers moneys paid by pre-emptors. — *Potter v. U. S.*, (1882) 107 U. S. 126.

Bond covers money deposited by entrymen. — The official bond of a receiver of public moneys covers money paid to the receiver by an entryman before the final determination of his case, as money so paid is paid to the receiver as a public officer of the United States, and not as the agent of the entryman. *Smith v. U. S.*, (1898) 170 U. S. 372; *Meads v. U. S.*, (C. C. A. 1897) 81 Fed. Rep. 684.

Validity of bond not under seal. — Where a person, after being appointed receiver of public moneys and becoming entitled to the emoluments of that office, executed a written obligation which purported to be a bond for the faithful performance of his duties, but was without seal, it was held that the obligation was not a bond within the Act of Congress, but that it was a valid contract at common law, as it was supported by a good consideration, — the consideration being not the mere appointment to office, but the emoluments and benefits resulting from the appointment; and that inasmuch as the statute did not prescribe any precise form of bond, the instrument executed was valid and binding on the obligors. *U. S. v. Linn*, (1841) 15 Pet. (U. S.) 290.

Effect of prior fraud on validity of bond.

— Where the condition of the bond is prospective, the instrument is not rendered null and void in its prospective operation by fraud in respect to past transactions—such as the concealment of a former defalcation by the principal from the sureties until they had executed the bond. *U. S. v. Boyd*, (1847) 5 How. (U. S.) 29.

Default after expiration of term.—Under the provisions of a statute extending the tenure of office of registers and receivers, and continuing the liability of the sureties on their official bonds during the extended terms, the sureties on the bond of a receiver and register are liable for a default of their principal occurring after the expiration of his original term and before the qualification of his successor. *U. S. v. Jameson*, (1882) 3 McCrary (U. S.) 620.

Breach of bond after removal from office.—“There may have been no breach of the bond at the time of his removal from office, but the liability of the receiver to account remained, and the bond continued in force until he had fully accounted and thus had fulfilled all the conditions of his bond.” *Smith v. U. S.*, (1898) 170 U. S. 372.

Conclusiveness of receiver's returns.—The returns of the receiver to the treasury department are not conclusive evidence in an action by the government against the sureties upon the receiver's official bond. If the returns show that certain sums of money were in the receiver's hands the sureties may show that such was not the case, as they cannot be concluded by a fabricated account of their prin-

cipal with his creditors. *U. S. v. Boyd*, (1847) 5 How. (U. S.) 29.

Retrospective effect of bond.—The official bond of a receiver is prospective and not retrospective. Hence, when the bond is executed some time after the appointment of the receiver and his entry upon the discharge of his duties, the sureties can only be held accountable for moneys in the receiver's hands at the date of the bond, held by him in his official capacity in trust for the government, and not for moneys previously appropriated to his own use, notwithstanding the fact that the bond contains a recital of the date of his appointment to office. But the sureties are liable for the misappropriation of a sum of money which the receiver held in trust for the United States at the time of the execution of the bond. In such case it matters not at what time the moneys were received if after the receiver's appointment they were held by him in trust for the United States, and continued to be so held at and after the date of the bond. *U. S. v. Boyd*, (1841) 15 Pet. (U. S.) 187, approved in *U. S. v. Boyd*, (1847) 5 How. (U. S.) 29.

Liability for money seized by public enemy.—Where the condition of a receiver's bond was broken by his failure to pay into the treasury, at the time prescribed by law, the moneys collected by him, it was held that it was no defense to an action on his official bond that the money was subsequently seized by the confederate government. *Bevans v. U. S.*, (1871) 13 Wall. (U. S.) 56.

An act for the relief of certain settlers on the public lands of the United States and to authorize the taking and filing of final proofs in certain cases.

[Act of Oct. 1, 1890, ch. 1269, 26 Stat. L. 657.]

[SEC. 1.] [Relates to pending cases.]

SEC. 2. [Vacancy in office of register or receiver—taking final proofs.] That hereafter, when a vacancy shall occur in any of the land offices of the United States by reason of the death, resignation, or removal of either the register or receiver, and the time set for taking final proof falls within the vacancy thus caused, the remaining officer may proceed to take said final proofs, in the absence of any contest or protest, reduce the same to writing, and place it on file in the office to be considered and passed upon when the vacancy is filled. [26 Stat. L. 657.]

An act relating to the disqualification of registers and receivers of the United States land offices, and making provision in case of such disqualification.

[Act of Jan. 11, 1894, ch. 10, 28 Stat. L. 26.]

[SEC. 1.] [Disqualification of register or receiver.] That no register or receiver shall receive evidence in, hear or determine any cause pending in any district land office in which cause he is interested directly or indirectly, or has been of counsel, or where he is related to any of the parties in interest by consanguinity or affinity within the fourth degree, computing by the rules adopted by the common law. [28 Stat. L. 26.]

SEC. 2. [*Duty to report disqualification — designation and powers of other officer.*] That it shall be the duty of every register or receiver so disqualified to report the fact of his disqualification to the Commissioner of the General Land Office, as soon as he shall ascertain it, and before the hearing of such cause, who thereupon, with the approval of the Secretary of the Interior, shall designate some other register, receiver, or special agent of the Land Department to act in the place of the disqualified officer, and the same authority is conferred on the officer so designated which such register or receiver would otherwise have possessed to act in such case. [28 Stat. L. 26.]

Sec. 2235. [*Residence of register and receiver.*] Every register and receiver shall reside at the place where the land-office for which he is appointed is directed by law to be kept. [R. S.]

See all Acts establishing land districts.

Sec. 2236. [*Bond of register and receiver.*] Every register and receiver shall, before entering on the duties of his office, give bond in the penal sum of ten thousand dollars, with approved security, for the faithful discharge of his trust. [R. S.]

Act of May 10, 1800, ch. 53, 2 Stat. L. 73, 75; Act of March 3, 1853, ch. 145, 10 Stat. L. 245.

Liability on bond.—See R. S. sec. 2234, *supra*.

Sec. 2237. [*Salaries of register and receiver.*] Every register and receiver shall be allowed an annual salary of five hundred dollars. [R. S.]

Act of April 20, 1818, ch. 123, 3 Stat. L. 466; Act of May 30, 1862, ch. 86, 12 Stat. L. 409.

Implied contract to pay necessary expenses.—It was held that an implied contract existed on the part of the government to reimburse the register the amount expended by him for office rent, where it appeared that the land district was established by law, that an office within the district was required for the transaction of the business thereof and also for the

keeping of the necessary papers and files, and that the amount paid for the rent was reasonable and proper. *U. S. v. Swiggett*, (C. C. A. 1897) 83 Fed. Rep. 97, *affirming* (1896) 78 Fed. Rep. 456. And see *infra*, R. S. 2255.

And this implied agreement to reimburse the register has been held to apply not only to money expended for office rent, but also to money expended for fuel and for janitor's services. *Luse v. U. S.*, (1900) 35 Ct. Cl. 164.

Sec. 2238. [*Fees and commissions of register and receiver.*] Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

First. A fee of one dollar for each declaratory statement filed and for services in acting on pre-emption claims.

Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 456; Act of March 21, 1864, ch. 38, 13 Stat. L. 35.

Fees of ex-officio register.—Under the "Alaska Territorial Act" May 17, 1884 (23 Stat. L., p. 24, sec. 9), providing that each of the commissioners created thereunder should perform the duties of a United States commissioner, of a notary, of a justice, of a recorder of deeds, and of a register of the

land office, and further providing that each commissioner should be paid commissioner's fees, justice's fees, recording fees, and a salary, it was held that it was the intention of Congress that a commissioner should not receive fees for services as register of the land office, but that the salary provided should be sufficient compensation for such services. *Jewett v. U. S.*, (1892) 27 Ct. Cl. 519.

Second. A commission of one per centum on all moneys received at each receiver's office.

Act of April 20, 1818, ch. 123, 3 Stat. L. 466.

Third. A commission to be paid by the homestead applicant, at the time of entry, of one per centum on the cash price, as fixed by law, of the land ap-

plied for; and a like commission when the claim is finally established, and the certificate therefor issued as the basis of a patent.

Act of May 20, 1862, ch. 75, 12 Stat. L. 393; Act of March 21, 1864, ch. 38, 13 Stat. L. 35; Act of July 15, 1870, ch. 294, 16 Stat. L. 320.

Fourth. The same commission on lands entered under any law to encourage the growth of timber on western prairies, as allowed when the like quantity of land is entered with money.

Act of March 3, 1873, ch. 277, 17 Stat. L. 606.

Fifth. For locating military bounty-land warrants, issued since the eleventh day of February, eighteen hundred and forty-seven, and for locating agricultural-college land-scrip, the same commission, to be paid by the holder or assignee of each warrant or scrip, as is allowed for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre.

Act of March 22, 1852, ch. 19, 10 Stat. L. 4; Act of July 2, 1862, ch. 130, 12 Stat. L. 505.

Sixth. A fee in donation cases of two dollars and fifty cents for each final certificate for one hundred and sixty acres of land, five dollars for three hundred and twenty acres, and seven dollars and fifty cents for six hundred and forty acres.

This paragraph was amended to read as above by the Act of Dec. 17, 1880, ch. 2, 21 Stat. L. 311.

It originally read as follows:

"Sixth. A fee, in donation cases, of five

dollars for each final certificate for one hundred and sixty acres of land, ten dollars for three hundred and twenty acres, and fifteen dollars for six hundred and forty acres." Act of May 30, 1862, ch. 86, 12 Stat. L. 409.

Seventh. In the location of lands by States and corporations under grants from Congress for railroads and other purposes, (except for agricultural colleges,) a fee of one dollar for each final location of one hundred and sixty acres; to be paid by the State or corporation making such location.

Act of July 1, 1864, ch. 196, 13 Stat. L. 335.

Eighth. A fee of five dollars per diem for superintending public-land sales at their respective offices; and, to each receiver, mileage in going to and returning from depositing the public moneys received by him.

Act of April 24, 1820, ch. 51, 3 Stat. L. 567.

district attorneys, and clerks. See PUBLIC OFFICERS.

Mileage abolished, except as to marshals,

Ninth. A fee of five dollars for filing and acting upon each application for patent or adverse claim filed for mineral lands, to be paid by the respective parties.

Act of May 10, 1872, ch. 152, 17 Stat. L. 95.

Tenth. Registers and receivers are allowed, jointly, at the rate of fifteen cents per hundred words for testimony reduced by them to writing for claimants, in establishing pre-emption and homestead rights.

Act of March 21, 1864, ch. 38, 13 Stat. L. 35.

Eleventh. A like fee as provided in the preceding subdivision when such writing is done in the land-office, in establishing claims for mineral lands.

Act of May 10, 1872, ch. 152, 17 Stat. L. 95.

Twelfth. Registers and receivers in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Mon-

tana, are each entitled to collect and receive fifty per centum on the fees and commissions provided for in the first, third, and tenth subdivisions of this section. [R. S.]

Act of March 21, 1864, ch. 38, 13 Stat. L. 36.

Sec. 2239. [*Fees of register and receiver for consolidated land offices.*] The register for any consolidated land-district, in addition to the fees now allowed by law, shall be entitled to charge and receive for making transcripts for individuals, or furnishing any other record information respecting public lands or land-titles in his consolidated land-district, such fees as are properly authorized by the tariff existing in the local courts of his district; and the receiver shall receive his equal share of such fees, and it shall be his duty to aid the register in the preparation of the transcripts, or giving the desired record information. [R. S.]

Act of Feb. 18, 1861, ch. 38, 12 Stat. L. 131.

Sec. 2240. [*Maximum of compensation for registers and receivers.*] The compensation of registers and receivers, including salary, fees, and commissions, shall in no case exceed in the aggregate three thousand dollars a year, each; and no register or receiver shall receive for any one quarter or fractional quarter more than a pro-rata allowance of such maximum. [R. S.]

Act of April 20, 1818, ch. 123, 3 Stat. L. 466; Act of March 22, 1852, ch. 19, 10 Stat. L. 4; Act of Feb. 2, 1859, ch. 19, 11 Stat. L. 378; Act of Feb. 18, 1861, ch. 38, 12 Stat. L. 131; Act of May 20, 1862, ch. 75, 12 Stat. L. 393; Act of May 30, 1862, ch. 86, 12 Stat. L. 409; Act of July 2, 1862, ch. 130, 12 Stat. L. 505; Act of March 21, 1864, ch. 38, 13 Stat. L. 36; Act of July 1, 1864, ch. 196, 13 Stat. L. 335.

See, however, following text.

Compensation is for fiscal year.—The fiscal year, not the calendar year, is the basis of time for computing the compensation of a register or receiver. Hence a register cannot claim that his compensation should be calculated on the basis of the calendar year, from the date of his entry on the discharge of his duties, for the purpose of avoiding the deduction from his quarterly earnings of the excess over the *pro rata* allowance of maximum compensation. *Sweet v. U. S.*, (1899) 34 Ct. Cl. 377. Compare *U. S. v. Dickson*, (1841) 15 Pet. (U. S.) 141.

Extra compensation for clerk hire.—Under the Act of April 20, 1818, which provided that receivers of public moneys should receive an annual salary of five hundred dollars each and a commission of one per cent. on the moneys received, as compensation for clerk hire, receiving, safe-keeping, and transmitting such moneys to the treasurer of the United States, and that the whole amount which any receiver should receive for any one year should not exceed the sum of \$3,000, it was held that clerk hire was a charge upon the commissions and could not be allowed as an extra charge by the commissioner of the general land office. (1848) 4 Op. Atty.-Gen. 467.

Compensation for services beyond scope of duty.—Where a receiver of public moneys

was also appointed as special receiver to assist in the disposition of Indian trust lands, which were never public lands of the United States, it was held that he was entitled to commissions on the sale of the Indian trust lands, though such commissions increased his compensation to a sum greater than the maximum amount prescribed by law for his services as receiver, as it was no part of his official duty as receiver to sell the Indian trust lands, or receive the payments therefor. In deciding the question the court said: "The duties to be performed were of a different character and at a different place from those of the land office, and while the exact amount of compensation for this service was not fixed, it was clearly to be inferred that such compensation as the law implies where labor is performed by one at the request of another, that is to say, a reasonable compensation, would be paid." *U. S. v. Brindle*, (1884) 110 U. S. 688.

Fees or commissions for military bounty lands.—The fees or commissions received by a register or receiver on account of military bounty lands, ought to be included in reckoning his compensation. Hence a register or receiver is not entitled to retain such fees or commissions when so doing would make the aggregate amount of his compensation exceed the sum prescribed by the statute. *U. S. v. Babbit*, (1861) 1 Black (U. S.) 55, (1877) 95 U. S. 334; *U. S. v. Brindle*, (1884) 110 U. S. 688.

And under the Act of March 22, 1852, sec. 3 (10 Stat. L., p. 4, sec. 4), providing that registers and receivers, whether in or out of office at the date of the passage of the Act, should be entitled to receive compensation for services theretofore performed in locating military bounty land warrants, subject to the proviso, however, that no register or re-

ceiver should receive for his services during any year a greater compensation than the maximum amount allowed by law, it was held that the proviso referred to was not limited in its effect to the section where it was found, but that it was affirmed by Congress as an independent proposition and applied alike to all registers and receivers, and that therefore the limitation as to the maximum amount of compensation applied not only to

the persons then in office and their predecessors, but also to their successors in office. *U. S. v. Babbit*, (1861) 1 Black (U. S.) 55.

As to prorating commissions, under the provisions of the Act of April 20, 1818, ch. 123, see *U. S. v. Dickson*, (1841) 15 Pet. (U. S.) 141; *U. S. v. Edwards*, (1839) 1 McLean (U. S.) 467, 25 Fed. Cas. No. 15,026; *U. S. v. McCarty*, (1838) 1 McLean (U. S.) 306, 26 Fed. Cas. No. 15,657.

Sec. 2241. [*Excess of compensation to be paid in Treasury.*] Whenever the amount of compensation received at any land-office exceeds the maximum allowed by law to any register or receiver, the excess shall be paid into the Treasury, as other public moneys. [R. S.]

Act of March 3, 1853, ch. 97, 10 Stat. L. 204; Act of Feb. 18, 1861, ch. 38, 12 Stat. L. 131.

An act in relation to certain fees allowed registers and receivers.

[Act of March 3, 1883, ch. 101, 22 Stat. L. 484.]

[SEC. 1.] [*Superseded.*]

This section was as follows:

"That the fees allowed registers and receivers for testimony reduced by them to writing for claimants, in establishing pre-emption and homestead rights and mineral entries, and in contested cases, shall not be

considered or taken into account in determining the maximum of compensation of said officers." [22 Stat. L. 484.]

It was superseded by the provisions of the Act of March 3, 1887, ch. 362, given *infra*.

SEC. 2. [*Plats of townships to be made for private parties and fees therefor.*] That registers and receivers shall, upon application, furnish plats or diagrams of townships in their respective districts showing what lands are vacant and what lands are taken, and shall be allowed to receive compensation therefor from the party obtaining said plat or diagram at such rates as may be prescribed by the Commissioner of the General Land Office and said officers shall, upon application by the proper State or Territorial authorities, furnish, for the purpose of taxation, a list of all lands sold in their respective districts, together with the names of the purchasers, and shall be allowed to receive compensation for the same not to exceed ten cents per entry; and the sums thus received for plats and lists shall not be considered or taken into account in determining the maximum of compensation of said officers. [22 Stat. L. 484.]

The latter portion of the section is superseded by the provisions of the following Act.

[*Excess of fees over \$3,000 to be covered into Treasury.*] * * * And hereafter all fees collected by registers or receivers, from any source whatever, which would increase their salaries beyond three thousand dollars each a year, shall be covered into the Treasury, except only so much as may be necessary to pay the actual cost of clerical services employed exclusively in contested cases; and they shall make report quarterly, under oath, of all expenditures for such clerical services, with vouchers therefor. * * * [24 Stat. L. 526.]

This is from the Sundry Civil Appropriation Act of March 3, 1887, ch. 362.

Sec. 2242. [*Illegal fees — penalty.*] No register or receiver shall receive any compensation out of the Treasury for past services who has charged or

received illegal fees; and, on satisfactory proof that either of such officers has charged or received fees or other rewards not authorized by law, he shall be forthwith removed from office. [R. S.]

Act of March 22, 1852, ch. 19, 10 Stat. L. 4; Act of July 17, 1854, ch. 84, 10 Stat. L. 306.

Sec. 2243. [*Compensation of registers and receivers, when to commence.*] The compensation of registers and receivers, both for salary and commissions, shall commence and be calculated from the time they, respectively, enter on the discharge of their duties. [R. S.]

Act of Feb. 24, 1855, ch. 124, 10 Stat. L. 615.

Duties performed before opening of office. — "Doing that which it is necessary to do, in order that a newly created land office may be in a proper and fit condition at the time appointed for opening it for the transaction of public business, is . . . a part of the official duties of the person who is appointed to the office." Hence, a person appointed

register and receiver of a newly created land office is entitled to compensation from the time he entered on the performance of such duties and not from the time of the actual opening of the office for the transaction of public business. And the right to salary may commence before it is possible for the register and receiver to earn commissions. *U. S. v. Delaney*, (1896) 164 U. S. 232, *affirming* (1895) 31 Ct. Cl. 44.

Sec. 2244. [*Duration of office of registers and receivers.*] All registers and receivers shall be appointed for the term of four years, but shall be removable at pleasure. [R. S.]

Act of May 15, 1820, ch. 102, 3 Stat. L. 582.

Sec. 2245. [*Monthly and quarterly returns of receivers.*] The receivers shall make to the Secretary of the Treasury monthly returns of the moneys received in their several offices, and pay over such money pursuant to his instructions. And they shall also make to the Commissioner of the General Land-Office like monthly returns, and transmit to him quarterly accounts-current of the debits and credits of their several offices with the United States. [R. S.]

Act of July 4, 1836, ch. 352, 5 Stat. L. 111.

Sec. 2246. [*Oaths administered by registers and receivers.*] The register or receiver is authorized, and it shall be their duty, to administer any oath required by law or the instructions of the General Land-Office, in connection with the entry or purchase of any tract of the public lands; but he shall not charge or receive, directly or indirectly, any compensation for administering such oath. [R. S.]

Act of June 12, 1840, ch. 35, 5 Stat. L. 384.

A prosecution for perjury may be maintained for the making of a false oath before a register or receiver, in regard to a homestead entry. *Caha v. U. S.*, (1894) 152 U. S. 211; *Peters v. U. S.*, (1894) 2 Okla. 116.

But it was held that perjury could not be predicated of an oath made in pursuance of a regulation, established by the commis-

sioner of the general land office, requiring holders of land warrants to make affidavit that there was no settlement on the land intended to be located, as the regulation was inconsistent with the Act of Feb. 11, 1847, (9 U. S. Stat. at L., p. 125), authorizing the location, and was therefore void. (1852) 5 Op. Atty-Gen. 609.

Sec. 2247. [*Penalty for false information by register.*] If any person applies to any register to enter any land whatever, and the register knowingly and falsely informs the person so applying that the same has already been entered, and refuses to permit the person so applying to enter the same, such register shall be liable therefor to the person so applying, for five dollars for each acre of land which the person so applying offered to enter, to be recovered

by action of debt in any court of record having jurisdiction of the amount. [R. S.]

Act of July 4, 1836, ch. 352, 5 Stat. L. 112.

[SEC. 1.] [*Authorization of expenditures.*] * * * That no expenses chargeable to the Government shall be incurred by registers and receivers in the conduct of local land offices, except upon previous specific authorization by the Commissioner of the General Land Office. * * * [31 Stat. L. 613.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791. The provision is repeated in the Acts of March 3, 1901, ch. 831, 31 Stat. L. 1036, March 3, 1901,

ch. 853, 31 Stat. L. 1158, Feb. 14, 1902, ch. 17, 32 Stat. L. 21; June 28, 1902, ch. 1301, 32 Stat. L. 452.

[IV. LAND DISTRICTS—GENERAL PROVISIONS RESPECTING CERTAIN LANDS.]

Sec. 2248. [*When land office may be discontinued by Secretary of the Interior.*] Whenever the quantity of public land remaining unsold in any land-district is reduced to a number of acres less than one hundred thousand, it shall be the duty of the Secretary of the Interior to discontinue the land-office of such district; and if any land in any such district remains unsold at the time of the discontinuance of a land-office, the same shall be subject to sale at some one of the existing land-offices most convenient to the district in which the land-office has been discontinued, of which the Secretary of the Interior shall give notice. [R. S.]

Act of June 12, 1840, ch. 36, 5 Stat. L. 385.

Secs. 2248-2256 constitute ch. 3, entitled "Land Districts" of title 32 of the Revised Statutes.

Extension of term of office.—Where a land office was about to be discontinued because of the reduction of the quantity of unsold land to less than one hundred thousand acres, and Congress passed an Act continuing the register and receiver in office

until they could perform certain duties, but the Act, while limiting the time for the performance of the duties, fixed no limit upon the term of service of the officers whose tenure was thus extended, it was held that their official existence ceased on the date limited for the performance of the duties provided for by the Act. (1855) 7 Op. Atty.-Gen. 448.

Sec. 2249. [*When land office may be continued by Secretary of the Interior.*] The Secretary of the Interior may continue any land-district in which is situated the seat of government of any one of the States, and may continue the land-office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when, in his opinion, such continuance is required by public convenience, or in order to close the land-system in such State. [R. S.]

Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 455.

Sec. 2250. [*When land office may be annexed to adjacent district by the President.*] Whenever the cost of collecting the revenue from the sales of the public lands in any land-district is as much as one-third of the whole amount of revenue collected in such district, it may be lawful for the President, if, in his opinion, not incompatible with the public interest, to discontinue the land-

office in such district, and to annex the same to some other adjoining land-district. [R. S.]

Act of March 3, 1853, ch. 97, 10 Stat. L. 189, 194.

Sec. 2251. [*Change of location of land office by the President.*] The President is authorized to change the location of the land-offices in the several land-districts established by law, and to relocate the same from time to time at such point in the district as he deems expedient. [R. S.]

Act of March 3, 1853, ch. 97, 10 Stat. L. 204; Act of March 3, 1853, ch. 144, 10 Stat. L. 244.

Sec. 2252. [*Discontinuance of land offices by the President.*] Upon the recommendation of the Commissioner of the General Land-Office, approved by the Secretary of the Interior, the President may order the discontinuance of any land-office and the transfer of any of its business and archives to any other land-office within the same State or Territory. [R. S.]

Act of May 30, 1862, ch. 86, 12 Stat. L. 409.

Sec. 2343. [*Additional land districts and officers, power of the President to provide.*] The President is authorized to establish additional land-districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter. [R. S.]

Act of July 26, 1866, ch. 262, 14 Stat. L. 252.

"Mineral Lands and Mining Resources," embracing sections 2318-2352. See MINERAL LANDS, MINES, AND MINING, vol. 5, p. 1.

This section is from chapter 6, entitled

Sec. 2253. [*Change of boundaries of land districts by the President.*] The President is authorized to change and re-establish the boundaries of land-districts whenever, in his opinion, the public interests will be subserved thereby, without authority to increase the number of land-offices or land-districts. [R. S.]

Act of June 29, 1870, ch. 171, 16 Stat. L. 171.

Sec. 2254. [*Business of original district in case of change of boundaries.*] In case of the division of existing land-districts by the erection of new ones, or by a change of boundaries by the President, all business in such original districts shall be entertained and transacted without prejudice or change, until the offices in the new districts are duly opened by public announcement under the direction of the Secretary of the Interior. All sales or disposals of the public lands heretofore regularly made at any land-office, after such lands have been made part of another district by any act of Congress, or by any act of the President, are confirmed, provided the same are free from conflict with prior valid rights. [R. S.]

Act of May 31, 1872, ch. 241, 17 Stat. L. 192.

[SEC. 1.] [*Consolidation of land offices.*] * * * And it shall be the duty of the Secretary of the Interior to consolidate the district land offices where practicable and consistent with the public interests. * * * [27 Stat. L. 368.]

This is from the Sundry Civil Appropriation Act of Aug. 5, 1892, ch. 380.

[*Consolidation of land offices.*] * * * **SALARIES AND COMMISSIONS OF REGISTERS AND RECEIVERS:** For salaries and commissions of registers of land offices and receivers of public moneys at district land offices, at not exceeding three thousand dollars each, five hundred and twenty thousand dollars.

And it shall be the duty of the Secretary of the Interior to consolidate the district land offices so as to bring their total compensation for the fiscal year eighteen hundred and ninety-four within this appropriation. * * * [27 Stat. L. 591.]

This is from the Sundry Civil Appropriation Act of March 3, 1893, ch. 208.

Sec. 2255. [*Allowance of office-rent and clerk-hire for consolidated land offices.*] The Secretary of the Interior is authorized to make a reasonable allowance for office-rent for each consolidated land-office; and when satisfied of the necessity therefor, to approve the employment by the register of one or more clerks, at a reasonable per-diem compensation, for such time as such clerical force is absolutely required to keep up the current public business, which clerical force shall be paid out of the surplus fees authorized to be charged by section twenty-two hundred and thirty-nine, if any, and if no surplus exists, then out of the appropriation for incidental expenses of district land-offices; but no clerk shall be so paid unless his employment has been first sanctioned by the Secretary of the Interior. [R. S.]

Act of Feb. 18, 1861, ch. 38, 12 Stat. L. 131.

Statute directory, not mandatory. — "The language of section 2255 is merely an authority to the secretary of the interior to allow for office rent for a consolidated land office. To what extent he should exercise that authority is left for him to determine, in view of the circumstances of each case and

of the state of the appropriation for incidental expenses; and no right can exist in any land officer to demand payment by the department of rent paid out by him, unless the payment of such rent had been previously authorized by the secretary." *Bane v. U. S.*, (1884) 19 Ct. Cl. 644.

[**SEC. 1.**] [*Entry of land in states where there are no land offices.*] That public lands situated in States in which there are no land offices may be entered at the General Land Office, subject to the provisions of law touching the entry of public lands; and that the necessary proofs and affidavits required in such cases may be made before some officer competent to administer oaths, whose official character shall be duly certified by the clerk of a court of record; and moneys received by the Commissioner of the General Land Office for lands entered by cash entry shall be covered into the Treasury. * * * [19 Stat. L. 315.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1877, ch. 102. This paragraph is repeated in the Act of June 19, 1878, ch. 329, sec. 2, 20 Stat. L. 201.

PROVISIONS RESPECTING PARTICULAR LOCAL LAND-DISTRICTS.

Sec. 2256. [*Boundaries of land districts in the United States on the 1st of November, 1872.*] The following boundaries of the ninety-three land-districts, with the location of the respective land-offices, are established until changed in pursuance of law, namely:

OHIO.

1. Chillicothe.

The land-district of Chillicothe is co-extensive with the limits of the State of Ohio.

INDIANA.

2. Indianapolis.

The land-district of Indianapolis is co-extensive with the limits of the State of Indiana.

ILLINOIS.

3. Springfield.

The land-district of Springfield is co-extensive with the limits of the State of Illinois.

MISSOURI.

4. Boonville.

The land-district of Boonville embraces all that part of the State of Missouri which lies north of the line between townships thirty-seven and thirty-eight north, lying east of the line between ranges ten and eleven west, and townships thirty-four and thirty-five north of ranges eleven to thirty-three west, inclusive, counting from the fifth principal meridian.

5. Ironton.

The land-district of Ironton embraces all that part of the State of Missouri which lies south of the line between townships thirty-seven and thirty-eight north, and east of the line between ranges ten and eleven west of the fifth principal meridian.

6. Springfield.

The land-district of Springfield consists of that portion of the State of Missouri which is situated south of the line between townships thirty-four and thirty-five north, and west of the line between ranges ten and eleven west of the fifth principal meridian.

ALABAMA.

7. Mobile.

The land-district of Mobile embraces the southwestern part of the State of Alabama; it lies south of the line between townships thirteen and fourteen north, and west of the line between ranges nine and ten east of the basis meridian of Saint Stephen's.

8. Huntsville.

This land-district consists of the northern part of the State of Alabama, lying north of the line between townships fourteen and fifteen south of the basis meridian of Huntsville, including the counties of De Kalb and Cherokee, and so much of the counties of Marshall, Etowah, and Jackson as were lately part of the Montgomery land-district in the State of Alabama.

9. Montgomery.

The land-district of Montgomery embraces the central and southeastern parts of the State of Alabama, situated south of the Huntsville land-district, and extending south to the line between townships thirteen and fourteen north

of the basis meridian of Saint Stephen's, across the whole State, and from townships one to thirteen north, inclusive, east from the line between ranges nine and ten east, to the eastern boundary of the State of Alabama.

LOUISIANA.

10. New Orleans.

The land-district of New Orleans comprehends within its limits that portion of the State of Louisiana which lies south of the basis parallel of thirty-first degree of north latitude, and a portion thereof lying north of the basis and south of the Red River, and east of the line between ranges three and four west of the principal meridian.

11. Natchitoches.

This land-district occupies the northwestern part of the State of Louisiana, extending from townships one to thirteen north, inclusive, and west of the line between ranges three and four west; and also from township fourteen north to the north boundary of the State, extending from the line between ranges five and six west of the principal meridian to the western boundary of the State of Louisiana.

12. Monroe.

The land-district of Monroe consists of the northeastern portion of the State; it is bounded on the east by the Mississippi River, on the south by Red River, and on the west by the line between ranges three and four west from townships six to thirteen north, inclusive, and from township fourteen north to the northern boundary of the State, by the line between ranges five and six west.

MISSISSIPPI.

13. Jackson.

The land-district of Jackson is co-extensive with the limits of the State of Mississippi.

MICHIGAN.

14. Detroit.

The land-district of Detroit includes all that part of the State of Michigan situated east of the following lines of public surveys, viz: Townships one to five north, inclusive, east of the principal meridian; townships six to nineteen north, inclusive, extending east of the line between ranges eleven and twelve east; townships one to four south, inclusive, lying east of the line between ranges three and four west; townships five to nine south, extending from the line between ranges four and five west. It also includes that part of the late Sheboygan land-district which lies north of the line between townships twenty-eight and twenty-nine north, and east of the line between ranges two and three west of the principal meridian, and extending to Lake Huron in the southern peninsula of Michigan, comprehending within its limits the island of Mackinaw.

15. East Saginaw

Land-district embraces townships six to ten north, lying east of the principal meridian and west of the line between ranges eleven and twelve east of said meridian; also townships eleven to twenty-eight north, lying east of the line between ranges two and three west of the principal meridian, and west of the line between ranges eleven and twelve east.

16. Ionia

Land-district includes the southwestern part of the southern peninsula of Michigan, extending south of the second correction-line north of the base-line and west of the East Saginaw district, and also west of that part of Detroit district adjoining south boundary of the State of Michigan.

17. Marquette

Land-district embraces the whole extent of the northern peninsula of Michigan, including Drummond Island and those adjacent to the Big Bay de Noc.

18. Traverse City or Sheboygan

Land-district includes that portion of the northwestern part of the lower peninsula of Michigan which lies north of the second correction-line and west of the line between ranges two and three west of the principal meridian, including islands in Lakes Huron, Michigan, and the Straits of Mackinac, exclusive of the islands of Mackinaw and Drummond.

ARKANSAS.

19. Dardanelle

Land-district is bounded on the east by a line between ranges seventeen and eighteen west of the fifth principal meridian, running north from the base-line to the corner common to townships twelve and thirteen north of the base-line, on the north by the line between townships twelve and thirteen north, on the west by the western boundary of the State of Arkansas, and on the south by the base-line.

20. Little Rock

Land-district is bounded as follows, viz: Beginning on the south boundary of the State of Arkansas where the line between ranges five and six west of the fifth principal meridian intersects the same; thence north on said range-line to the corner common to townships ten and eleven south; thence west on the line between townships ten and eleven south to the line between ranges seventeen and eighteen west; thence north on the said range-line to the corner common to townships twelve and thirteen north of the base-line; thence east on the line between townships twelve and thirteen north to the line between ranges seven and eight west; thence north along said range-line to the north boundary of the State; thence east with the said boundary to the Saint Francis River; thence down said river to the intersection of the thirty-sixth degree and thirty minutes of north latitude; thence east along said parallel of north latitude to the Mississippi River; thence down said river to the south boundary of the State of Arkansas; and thence west along said boundary to the point of beginning.

21. Camden

Land-district is bounded on the north by the base-line extending from the west boundary of the State of Arkansas to the intersection of the line between ranges seventeen and eighteen west of the fifth principal meridian; thence south with the said range-line to the corner common to townships ten and eleven south of the base-line; thence east, on the line between townships ten and eleven south, to the intersection of the line between ranges five and six west of the fifth principal meridian; thence south along said range-line to the south boundary of the State; thence west with the said boundary to the west boundary of the State; and thence with the west boundary to the place of beginning.

22. Harrison

Land-district comprises all that part of the State of Arkansas which lies north of the line between townships twelve and thirteen north of the base-line, and west of the line between ranges seven and eight west of the fifth principal meridian.

FLORIDA.

23. Tallahassee

Land-district embraces all that part of the State of Florida which lies west of the line between ranges fourteen and fifteen east of the principal meridian.

24. Gainesville or East Florida

Land-district consists of that part of the State of Florida lying east of the line between ranges fourteen and fifteen east of the principal meridian.

IOWA.

25. Fort Des Moines

Land-district embraces the eastern portion of the State of Iowa, and is bounded as follows, viz: Beginning on the south boundary of the State where the line between ranges thirty-three and thirty-four west of the fifth principal meridian intersects the same; thence north along said range-line to the corner common to townships eighty-five and eighty-six north of the base-line; thence east on the line between said townships to the line between ranges eighteen and nineteen west; thence north with said range-line to the corner common to townships ninety-three and ninety-four north; thence west on the line between said townships to the line between ranges twenty-four and twenty-five west; thence north on said range-line to the north boundary of the State; thence east with said boundary to the Mississippi River; thence down the river to the mouth of Des Moines River; thence up said river to the south boundary of Iowa, and thence west along the said boundary to the place of beginning.

26. Council Bluffs

Land-district is bounded on the north by the line between townships eighty-five and eighty-six north, extending east from the Missouri River to the line between ranges thirty-three and thirty-four west of the fifth principal meridian; thence south with said range-line to the south boundary of the State; thence west with said boundary to the Missouri River; thence up the Missouri River to the place of beginning.

27. Fort Dodge

Land-district is bounded on the north by the north boundary of the State of Iowa, extending east from the line between ranges thirty-three and thirty-four west of the fifth principal meridian to the line between ranges twenty-four and twenty-five west; thence south with said range-line to the corner common to townships ninety-three and ninety-four north; thence east on the line between townships ninety-three and ninety-four north to the line between ranges eighteen and nineteen west; thence south along said range-line to the corner common to townships eighty-five and eighty-six north; thence west on the line between said townships to the line between ranges thirty-three and thirty-four west; thence north with said range-line to the place of beginning.

28. Sioux City

Land-district is bounded on the north by the north boundary of the State of Iowa; on the east by the line between ranges thirty-three and thirty-four west of the fifth principal meridian; on the south by the line between townships eighty-five and eighty-six north; and on the west by the Missouri and Big Sioux Rivers.

WISCONSIN.

29. Menasha

Land-district embraces eastern part of the State of Wisconsin lying east of the line between ranges eight and nine east, extending from the south boundary of the State to the corner common to townships fourteen and fifteen north; thence east on said township-line to the line between ranges eleven and twelve east; thence north along the said range-line to the north boundary of the State.

30. Falls Saint Croix

Land-district is bounded on the north by the fourth correction-line north of the base-line; on the east by the line between ranges eleven and twelve west of the fourth principal meridian; on the south by the Chippeway and Mississippi Rivers, and on the west by the Saint Croix River.

31. Wausau

Land-district embraces all that portion of the State of Wisconsin lying north of the line between townships fourteen and fifteen north of the base-line; west of the line between ranges eleven and twelve east of the fourth principal meridian; and east of the line between ranges one and two east of the fourth principal meridian.

32. La Crosse

Land-district is included within the following boundaries, to wit: Beginning on the south boundary of the State of Wisconsin, where the line between ranges eight and nine east of the fourth principal meridian intersects the same; thence north with the said range-line to the corner common to townships fourteen and fifteen north of the base-line; thence west with said line to the line between ranges one and two east; thence north along said range-line to the corner common to townships twenty-four and twenty-five north; thence west on the line between said townships to the line between ranges eleven and twelve west; thence north with said range-line to the intersection with the Chippeway River; thence down

said river to its mouth; thence down the Mississippi River to the southern boundary of Wisconsin; and thence east along the said boundary to the place of beginning.

33. Bayfield

Land-district embraces all that part of the northwestern corner of the State of Wisconsin lying north of the fourth correction-line and west of the line between ranges one and two east of the fourth principal meridian.

34. Eau Claire

Land-district is bounded on the north by the fourth correction-line running through ranges one east and one to eleven west of the fourth principal meridian; on the west by the line running south between ranges eleven and twelve west to the corner common to townships twenty-four and twenty-five north of the base-line; on the south by the line running east between said townships to the line between ranges one and two east of the fourth principal meridian, and on the east by the said range-line extending north to the corner common to townships forty and forty-one north of the base-line, to the place of beginning.

CALIFORNIA.

35. San Francisco

Land-district is bounded as follows: Beginning on the Pacific Ocean where the line between townships seventeen and eighteen north intersects the ocean, and running thence east with the said township-line to the line between ranges six and seven west of the Mount Diablo meridian; thence south on said range-line to the corner common to townships sixteen and seventeen north; thence east between said townships to the line between ranges five and six west; thence south along the line between ranges five and six west to the second standard north of the Mount Diablo base-line; thence east along said standard-line, to the line between ranges four and five west; thence south on line between ranges four and five west to the corner common to townships nine and ten north; thence east between townships nine and ten north to the line between ranges three and four west; thence south between ranges three and four west to the corner common to townships seven and eight north; thence east on the line between townships seven and eight north to the line between ranges three and four east; thence south on the line between ranges three and four east to the first standard north; thence west along said standard to the line between ranges two and three east; thence south on the line between ranges two and three east to the corner common to townships three and four north; thence west between townships three and four north to the line between ranges one and two east; thence south on line between ranges one and two east to the corner common to townships one and two north; thence east to the line between ranges two and three east; thence north between ranges two and three east to the corner common to townships two and three north; thence east on said township-line to the line between ranges four and five east; thence south on the line between ranges four and five east to the corner common to townships one and two south of the Mount Diablo base-line; thence east between townships one and two south to the line between ranges five and six east; thence south on said range-line to the corner common to townships seven and eight south; thence east on the line between townships seven and eight south to the line between ranges six and seven east; thence south on said range-line to the corner common to townships nine and ten south; thence east

to the line between ranges seven and eight east; thence south to the corner common to townships ten and eleven south; thence east on line between townships ten and eleven south to the line between ranges eight and nine east; thence south on said range-line to the intersection of the third standard south; thence east along said standard to the line between ranges nine and ten east; thence on said range-line to the corner common to townships thirteen and fourteen south; thence east on the line between townships thirteen and fourteen south to the line between ranges ten and eleven east; thence south between ranges ten and eleven east to the corner common to townships fifteen and sixteen south; thence east on the line between townships fifteen and sixteen south to the line between ranges eleven and twelve east; thence south to the fourth standard south; thence east along said standard to the line between ranges twelve and thirteen east; thence south on said range-line to the corner common to townships eighteen and nineteen south; thence east along said township-line to the line between ranges thirteen and fourteen east; thence south to the fifth standard-line south; thence east along said standard-line to the line between ranges fourteen and fifteen east; thence south to the corner common to townships twenty-two and twenty-three south; thence east on the line between townships twenty-two and twenty-three south to the line between ranges fifteen and sixteen east; thence south on said range-line to the corner common to townships twenty-three and twenty-four south; thence east on said township-line to the line between ranges sixteen and seventeen east; thence south on said range-line to the corner common to townships twenty-six and twenty-seven south; thence east on said township-line to the line between ranges seventeen and eighteen east; thence south between said ranges to the corner common to townships twenty-seven and twenty-eight south; thence east on the line between said townships to the line between ranges eighteen and nineteen east; thence south on said range-line to the seventh standard-line south of the base-line; thence east along said standard-line to the line between ranges nineteen and twenty east; thence south on said range-line to the corner common to townships twenty-nine and thirty south; thence east on said township line to the line between ranges twenty and twenty-one east; thence south on said range-line to the corner common to townships thirty and thirty-one south; thence east on said township-line to the line between ranges twenty-one and twenty-two east; thence south on said range-line to the corner common to townships thirty-one and thirty-two south; thence east on line between townships thirty-one and thirty-two south to the line between ranges twenty-two and twenty-three east; thence south to the eighth standard-line south; thence east along said standard-line of the Mount Diablo base-line to the line between ranges twenty-three and twenty-four west of the San Bernardino meridian; thence south on said range-line to the corner common to townships ten and eleven north of the San Bernardino base-line; thence east on line between said townships to the line between ranges twenty and twenty-one west; thence south on said range-line to the first standard north of the San Bernardino base-line; thence west along said standard-line to the Pacific Ocean, and thence northwesterly along the ocean to the place of beginning.

36. Marysville

Land-district is bounded as follows: Beginning at a point where the north boundary of township twenty-five north is intersected by the line between ranges seven and eight west of the Mount Diablo meridian; thence east along the fifth standard north to the southeast corner of township twenty-six north, range four east; thence north to the corner of townships twenty-six and twenty-seven north, ranges four and five east; thence east to the corner of townships twenty-six and

twenty-seven north, ranges five and six east; thence south to the fifth standard north; thence east along said standard to the line between ranges eight and nine east; thence south to the corner of townships twenty-three and twenty-four north, ranges eight and nine east; thence east to the line between ranges eleven and twelve east; thence south to the corner of townships twenty-one and twenty-two north, ranges eleven and twelve east; thence west to the corner of townships twenty-one and twenty-two north, ranges ten and eleven east; thence south to the fourth standard north; thence west along said standard, to the line between ranges nine and ten east; thence south, to the corner of townships nineteen and twenty north, ranges nine and ten east; thence west to the line between ranges eight and nine east; thence south to the corner of townships sixteen and seventeen north; thence west to the line between ranges six and seven east; thence south to the corner of townships thirteen and fourteen north, ranges six and seven east; thence west to the line between ranges five and six east; thence south to the corner of townships twelve and thirteen north; thence west to the line between ranges four and five east; thence south to the corner of townships eleven and twelve north; thence west to the line between ranges three and four east; thence south to the corner of townships seven and eight north; thence west to the line between ranges three and four west; thence north to the corner of townships nine and ten north; thence west to the line between ranges four and five west; thence north to the intersection of the second standard north; thence west along said standard to the southwest corner of township eleven north, range five west; thence north to the corner of townships sixteen and seventeen north; thence west to the corner of townships sixteen and seventeen north, ranges six and seven west; thence north to the corner of townships nineteen and twenty north; thence west to the line between ranges seven and eight west, and thence north to the place of beginning.

37. Humboldt

Land-district is bounded as follows: Beginning at a point where the northern boundary of the State of California intersects the Pacific Ocean; thence east to the intersection of the line between ranges ten and eleven west of the Mount Diablo meridian; thence south on said range-line to the corner of townships twenty-five and twenty-six north; thence east to the line between ranges seven and eight west; thence south to the corner of townships nineteen and twenty north, ranges seven and eight west; thence east to the line between ranges six and seven west; thence south to the corner of townships seventeen and eighteen north; thence west to the Pacific Ocean, and thence northwesterly, with the ocean, to the point of beginning.

38. Stockton

Land-district is bounded as follows: Beginning at the northwest corner of township five north, range five east of the Mount Diablo meridian, and running thence east along the first standard north to the line between ranges nine and ten east; thence south to the corner of townships three and four north, ranges nine and ten east; thence east to the line between ranges seventeen and eighteen east; thence north to the corner of townships four and five north, ranges seventeen and eighteen east; thence east to the line between ranges twenty-two and twenty-three east; thence south to the first standard south of the Mount Diablo baseline; thence east along said standard-line to the line between ranges twenty-six and twenty-seven east; thence south to the third standard south; thence west along said standard to the line between ranges eight and nine east; thence north

to the corner of townships ten and eleven south; thence west to the line between ranges seven and eight east; thence north to the corner of townships nine and ten south; thence west to the line between ranges six and seven east; thence north to the corner of townships seven and eight south; thence west to the line between ranges five and six east; thence north to the corner of townships one and two south; thence west to the line between ranges four and five east; and thence north to the place of beginning.

39. Visalia

Land-district is bounded as follows: Beginning at the northwest corner of township thirteen south, range ten east, of the Mount Diablo meridian; running thence east along the third standard south to the line between ranges thirty-two and thirty-three east; thence south to the sixth standard south; thence east along said standard to the line between ranges thirty-two and thirty-three east; thence south along said range-line to the sixth standard south; thence east along said standard to the intersection of the San Bernardino meridian; thence north along said meridian to the intersection of the eastern boundary of the State of California; thence southeasterly along said boundary to the intersection of the line between townships eleven and twelve north of the San Bernardino base-line; thence west to the intersection of the San Bernardino meridian; thence with said meridian to the point where the same is intersected by the eighth standard south of the Mount Diablo meridian; thence west with the eighth standard south to the line between ranges twenty-two and twenty-three east of the Mount Diablo meridian; thence north to the corner of townships thirty-one and thirty-two south; thence west to the line between ranges twenty-one and twenty-two east; thence north to the corner of townships thirty and thirty-one south; thence west to the line between ranges twenty and twenty-one east; thence north to the corner of townships twenty-nine and thirty south; thence west to the line between ranges nineteen and twenty east; thence north to the seventh standard south; thence west along said standard to the line between ranges eighteen and nineteen east; thence north to the corner of townships twenty-seven and twenty-eight south; thence west to the line between ranges seventeen and eighteen east; thence north to the corner of townships twenty-six and twenty-seven south; thence west to the line between ranges sixteen and seventeen east; thence north along said range-line to the corner of townships twenty-three and twenty-four south; thence west to the line between ranges fifteen and sixteen east; thence north to the corner of townships twenty-two and twenty-three south; thence west to the line between ranges fourteen and fifteen east; thence north to the fifth standard south; thence west along said standard-line, to the line between ranges thirteen and fourteen east; thence north to the corner of townships eighteen and nineteen south; thence west to the line between ranges twelve and thirteen east; thence north to the fourth standard south; thence west along said standard to the line between ranges eleven and twelve east; thence north to the corner of townships fifteen and sixteen south; thence west to the line between ranges ten and eleven east; thence north to the corner of townships thirteen and fourteen south; thence west to the line between ranges nine and ten east; and thence north to the place of beginning.

40. Sacramento

Land-district is bounded as follows: Beginning at the northwest corner of township twenty north, range ten east; thence east along the fourth standard north of the Mount Diablo base-line to the line between ranges ten and eleven

east; thence north to the corner of townships twenty-one and twenty-two north; thence east to the line between ranges thirteen and fourteen east; thence south along said line to the corner of townships nineteen and twenty east; thence east to the intersection of the eastern boundary of California; thence south to the intersection of the boundary with the thirty-ninth parallel of north latitude; thence southeasterly with the eastern boundary of California to the intersection of the western boundary of the Aurora land-district, or the line between ranges twenty-two and twenty-three east of the Mount Diablo meridian; thence south on said range-line to the corner of townships four and five north; thence west to the line between ranges seventeen and eighteen east; thence south to the corner of townships three and four north; thence west to the line between ranges nine and ten east; thence north to the first standard north; thence west with the said standard to the line between ranges four and five east; thence south to the corner of townships two and three north; thence west to the line between ranges two and three east; thence south to the corner of townships one and two north; thence west to the line between ranges one and two east; thence north to the corner of townships three and four north; thence east to the line between ranges two and three east; thence north on the line between ranges two and three east to the intersection of the first standard north; thence east along said standard-line to the line between ranges three and four east; thence north to the corner of townships eleven and twelve north; thence east to the line between ranges four and five east; thence north to the corner of townships twelve and thirteen north; thence east to the line between ranges five and six east; thence north to the corner of townships thirteen and fourteen north; thence east to the line between ranges six and seven east; thence north to the corner of townships sixteen and seventeen north; thence east to the line between ranges eight and nine east; thence north to the corner of townships nineteen and twenty north; thence east to the line between ranges nine and ten east; thence north to the point of beginning.

41. Los Angeles

Land-district is bounded as follows: Beginning at a point of the intersection of the first standard north of the San Bernardino base-line with the Pacific Ocean; thence east along said standard-line to the line between ranges twenty and twenty-one west of the San Bernardino meridian; thence north to the corner of townships ten and eleven north; thence west to the line between ranges twenty-three and twenty-four west; thence north with said range-line to the intersection of the eighth standard-line south of the Mount Diablo base-line; thence east with said standard-line to the intersection of the San Bernardino meridian; thence south to the corner of townships eleven and twelve north of San Bernardino base-line; thence east to the intersection of the eastern boundary of the State of California; thence in a southeasterly direction with said boundary to the intersection of the Colorado River of the West; thence down said river to the intersection of the boundary between the United States and Mexico; thence southwesterly with said boundary to the Pacific Ocean; and thence in a northwesterly direction along the ocean to the place of beginning.

42. Shasta

Land-district is bounded as follows: Beginning on the northern boundary of the State of California, where the line between ranges ten and eleven west of the Mount Diablo meridian intersects said boundary; thence east with said boundary to the intersection of the line between ranges five and six east; thence

south on said range-line to the corner to townships thirty and thirty-one north; thence west to the line between ranges four and five east; thence south to the fifth standard north of the Mount Diablo base-line; thence west along said standard-line to the line between ranges ten and eleven west; and thence north with said range-line to the north boundary of the State, the point of beginning.

43. Susanville .

Land-district is bounded as follows: Beginning at a point where the north boundary of township nineteen north, Mount Diablo base-line, intersects the eastern boundary of the State of California; thence west on the north boundary of township nineteen north to the corner of townships nineteen and twenty north, ranges thirteen and fourteen east; thence north to the corner of townships twenty-one and twenty-two north, ranges thirteen and fourteen east; thence west to the corner of townships twenty-one and twenty-two north, ranges eleven and twelve east; thence north to the corner of townships twenty-three and twenty-four north, ranges eleven and twelve east; thence west to the corner of townships twenty-three and twenty-four north, ranges eight and nine east; thence north to the corner of townships twenty-five and twenty-six north, ranges eight and nine east; thence west to the corner of townships twenty-five and twenty-six north, ranges five and six east; thence north between ranges five and six east to the corner of townships twenty-six and twenty-seven north, ranges five and six east; thence west to the corner of townships twenty-six and twenty-seven north, ranges four and five east; thence north to the corner of townships thirty and thirty-one north, ranges four and five east; thence east to the corner of townships thirty and thirty-one north, ranges five and six east; thence north along said range-line to the northern boundary of the State of California; thence east with the said boundary to the intersection of the eastern boundary of the State, and thence south along the eastern boundary to the place of beginning.

NEVADA.

44. Carson City

Land-district is bounded as follows: Beginning at the northwest corner of the State of Nevada; thence east with the north boundary of the State to the intersection of the line between ranges forty-four and forty-five east of the Mount Diablo meridian; thence south on said range-line to the corner of townships twenty-four and twenty-five north of the Mount Diablo base-line; thence west to the lines [*sic*] between ranges thirty-nine and forty east; thence south along said range-line to the corner of townships thirteen and fourteen north; thence west to the line between ranges twenty-six and twenty-seven east; thence south along said range-line to the corner of townships ten and eleven north; thence west to the line between ranges twenty-two and twenty-three east; thence south along said range-line to the intersection of the eastern boundary of California; thence northwesterly along said boundary to the intersection of the thirty-ninth parallel of north latitude with the one hundred and twentieth meridian of west longitude from Greenwich; thence north with said meridian to the place of beginning.

45. Austin

Land-district is bounded as follows: Beginning at the corner to townships twenty-four and twenty-five north, ranges thirty-nine and forty east; thence east to the eastern boundary of the State of Nevada; thence south with the

said boundary to the line between townships thirteen and fourteen north; thence west with said township-line to the intersection of the line between ranges thirty-nine and forty east; thence north with said range-line to the place of beginning.

46. Belmont

Land-district is bounded as follows: Beginning at the corner to townships thirteen and fourteen north of Mount Diablo base-line, between ranges thirty-nine and forty east; thence east to the eastern boundary of the State of Nevada; thence south with said boundary to the Colorado River of the West; thence down said river to the intersection of the thirty-fifth degree of north latitude; thence northwesterly along the east boundary of the State of California to the intersection of the line between ranges thirty-nine and forty east; thence along said range-line to the place of beginning.

47. Aurora

Land-district is bounded as follows: Beginning at the corner common to townships thirteen and fourteen north, ranges thirty-nine and forty east of the Mount Diablo base-line; thence west on the line between townships thirteen and fourteen north, to the intersection of the line between ranges twenty-six and twenty-seven east; thence south on said range-line to the corner of townships ten and eleven north; thence west to the line between ranges twenty-two and twenty-three east; thence south along the said range-line to the intersection of the first standard parallel south; thence east to the line between ranges twenty-six and twenty-seven east; thence south on the said range-line to the intersection of the third standard parallel south; thence east to the line between ranges thirty-two and thirty-three east; thence south on the said range-line to the intersection of the sixth standard parallel south; thence east to the San Bernardino meridian; thence north with said meridian to the intersection of the eastern boundary of California; thence northwesterly with said eastern boundary to the intersection of the line between ranges thirty-nine and forty east of Mount Diablo meridian; thence north on the said range-line to the place of beginning.

48. Elko

Land-district is bounded as follows: Commencing at the corner common to townships twenty-four and twenty-five north, range[s] forty-four and forty-five east, Mount Diablo base and meridian; thence running due east to the eastern boundary-line of the State of Nevada; thence north on said eastern boundary of said State to the north boundary of said State; thence west on said north boundary of said State to the eastern boundary of the Carson land-district; thence south along said eastern boundary of the Carson land-district to the place of beginning.

WASHINGTON.

49. Olympia

Land-district is bounded as follows: Beginning on the boundary-line between the United States and the British possessions, and on the summit of the Cascade Mountains, at the nearest range-line to the east line of range twelve east of the Willamette meridian; thence south on the nearest range-lines on the summit of said mountains to the line dividing townships ten and eleven north of the base-line; thence west to the line dividing ranges six and seven west;

thence north on said range-line to the third standard parallel; thence west to Shoal Water Bay; thence with the Shoal Water Bay to the Pacific Ocean; thence northwesterly with the ocean to the Strait of Juan de Fuca; and thence along the boundary-line between the United States and British possessions, running through the said strait and that of De Harro, to the intersection of the forty-ninth parallel of north latitude; and thence due east along said parallel to the place of beginning.

50. Vancouver or Columbia River

Land-district is bounded as follows: Beginning at a point where the line between townships twelve and thirteen north intersects Shoal Water Bay; thence with the Shoal Water Bay, including any islands therein, to the Pacific Ocean; thence southerly with the ocean to the mouth of Columbia River; thence up the river to the point opposite the line between ranges nineteen and twenty east of the Willamette meridian; thence north with said range-line to the corner common to townships ten and eleven north; thence west along said township-line to the line between ranges six and seven west; thence north on said range-line to the intersection of the third standard parallel north; thence west with the said standard parallel to the place of beginning.

51. Walla-Walla

Land-district is bounded as follows: Beginning on the boundary-line between the United States and the British possessions, on the summit of the Cascade Mountains; thence southerly along the line established by the first section of the act of May sixteen, eighteen hundred and sixty, entitled "An act to create an additional land-district in Washington Territory," to the line dividing townships ten and eleven north; thence east to the line dividing ranges nineteen and twenty east; thence south along said line to the Columbia River; thence up the Columbia River to the point where the forty-sixth parallel of north latitude crosses the river; thence east along the parallel to the eastern boundary of the Territory of Washington; thence north with said eastern boundary to the boundary-line between the United States and the British possessions; and thence west along the said boundary to the place of beginning.

MINNESOTA.

52. Taylor's Falls

Land-district is bounded as follows: Beginning at a point where the northern boundary of township forty-five north of the base-line and fourth principal meridian intersects the boundary between the States of Minnesota and Wisconsin; thence south along said boundary to the intersection of the Saint Croix River; thence down with said river to its mouth; thence up the Mississippi River to the intersection of the line between ranges twenty-seven and twenty-eight west of the fourth principal meridian with said river; thence north with said range-line to the corner of townships forty-five and forty-six north; and thence east to the place of beginning.

53. Saint Cloud

Land-district is bounded as follows: Beginning at a point of intersection of the fifth standard parallel north of the base-line with the line between ranges thirty-five and thirty-six west of the fifth principal meridian; thence north with

the said range-line to the boundary-line between the United States and British possessions; thence east and southeasterly along said boundary to the intersection of the line between ranges twenty-three and twenty-four west of the fourth principal meridian; thence south with said range-line to the corner of townships forty-five and forty-six north; thence west to the line between ranges twenty-seven and twenty-eight west; thence south with said range-line to the Mississippi River; thence up the river to the intersection of the line between ranges twenty-four and twenty-five west of the fifth principal meridian with said river; thence south on the line between ranges twenty-four and twenty-five west to the intersection of the fifth standard parallel north; thence west with said standard parallel to the place of beginning.

54. Du Luth

Land-district is bounded as follows: Commencing at a corner common to townships forty-five and forty-six north, ranges twenty-three and twenty-four west of the fourth principal meridian; thence north with said range-line to the intersection of the boundary-line between the United States and the British possessions; thence eastwardly with said boundary to Lake Superior; thence southwesterly with said lake to the mouth of Saint Louis River; thence up said river to the intersection of the boundary-line between Wisconsin and Minnesota; thence south along said boundary-line to the intersection of the line between townships forty-five and forty-six north; and thence west between townships forty-five and forty-six north to the place of beginning.

55. Alexandria

Land-district is bounded as follows: On the east by the line between ranges thirty-five and thirty-six west of the fifth principal meridian; on the north by the ninth standard parallel north of the base-line; on the south by the sixth standard parallel north; and on the west by the western boundary of the State of Minnesota.

56. Jackson.

Root River land-district is bounded on the south by the boundary-line between the States of Iowa and Minnesota; on the west by the western boundary of the State of Minnesota; on the north by the line between townships one hundred and five and one hundred and six north; and on the east by the Mississippi River.

57. New Ulm.

Winona land-district is bounded on the north by the line between townships one hundred and ten and one hundred and eleven north; on the south by the line between townships one hundred and five and one hundred and six north of the base-line; on the east by the Mississippi River, and on the west by the western boundary of the State of Minnesota.

58. Litchfield

Land-district is bounded as follows: Beginning on the Mississippi River at a point of the intersection of the south boundary of township twenty-seven north of the base-line with said river; thence west on said township-line to the southwest corner of township twenty-seven north, range twenty-four west of the fourth principal meridian; thence north to the intersection of the line between townships one hundred and fifteen and one hundred and sixteen north; thence

west with said township-line to the western boundary of Minnesota; thence north with the western boundary of the State of Minnesota to the intersection of the said boundary, with the sixth standard parallel north; thence east with said standard parallel to the intersection of the line between ranges thirty-five and thirty-six west of the fifth principal meridian; thence south along said range-line to the intersection of the fifth standard parallel north; thence east with the said standard parallel to the third guide-meridian west of the fifth principal meridian; thence north with said third guide-meridian to the Mississippi River; thence down the Mississippi River to the place of beginning.

59. Redwood Falls

Land-district is bounded on the south by the line between townships one hundred and ten and one hundred and eleven north; on the west by the western boundary of the State of Minnesota; on the north by the line between townships one hundred and fifteen and one hundred and sixteen north, extending east from the western boundary of the State of Minnesota to the intersection of the western boundary of township twenty-seven north, range twenty-four west of the fourth principal meridian; thence south with said west boundary of township twenty-seven north to the southwest corner thereof; thence east with the south boundary of township twenty-seven north to the Mississippi River; thence down the Mississippi River to the intersection of the line between townships one hundred and ten and one hundred and eleven north of the base-line.

60. Oak Lake

Land-district embraces all that part of the State of Minnesota which lies north of township number one hundred and thirty-six north and west of range number thirty-five west of the fifth principal meridian.

OREGON.

61. Oregon City

Land-district is bounded as follows: Beginning at a point of the intersection of the third standard parallel south of the Willamette base-line with the Pacific Ocean; thence east along said standard-line to the summit of the Cascade Mountains; thence south to the fourth standard parallel south; thence east with said fourth standard-line to the intersection of the line between ranges twenty-two and twenty-three east of the Willamette meridian; thence north along said range-line to the Columbia River; thence down the Columbia River to the Pacific Ocean; thence with the ocean to the place of beginning.

62. Roseburgh

Land-district is bounded on the north by the third standard parallel south of the base-line extending from the Pacific Ocean east to the summit of the Cascade Mountains; on the east by said Cascade Mountains extending south to the intersection of the fourth standard south; thence west along said standard to the intersection of the line between ranges five and six east; thence south along said range-line to the south boundary of Oregon; thence west with said boundary to the Pacific Ocean; and thence along the ocean to the place of beginning.

63. Le Grand

Land-district is bounded on the west by the line between ranges twenty-two and twenty-three east of the Willamette meridian; on the south by the fourth standard parallel south of the base-line; on the east by the Snake River, and on the north by the boundary-line between Washington Territory and the State of Oregon and the Columbia River.

64. Linkville.

Linkton district embraces all that portion of the State of Oregon lying south of the fourth standard parallel south of the base-line between townships eighteen and nineteen south, and east of the meridian-line between ranges five and six in said State.

KANSAS.

65. Topeka

Land-district is bounded on the north by the boundary-line between the States of Kansas and Nebraska; on the east by the Missouri River and the boundary-line between the States of Arkansas and Missouri; on the south by the line between townships twenty-two and twenty-three south of the base-line; and on the west by guide-meridian east of the sixth principal meridian.

66. Salina.

Western land-district is bounded on the east by the guide-meridian east of the sixth principal meridian; on the south by the fourth standard parallel south of the base-line; on the west by the boundary-line between Kansas and Colorado; and on the north by the second standard parallel south of the base-line.

67. Independence

Land-district is bounded on the north by the line between townships twenty-two and twenty-three south of the base-line; on the east by the western boundary of the State of Missouri; on the south by the south boundary of the State of Kansas; and on the west by the guide-meridian east of the sixth principal meridian.

68. Wichita.

Arkansas land-district is bounded on the north by the fourth standard parallel south; on the east by the guide-meridian east of the sixth principal meridian; on the south by the south boundary of the State of Kansas; and on the west by the boundary between the State of Kansas and the Territory of Colorado.

69. Concordia.

Republican land-district is bounded on the east by the guide-meridian east of the sixth principal meridian; on the south by the second standard parallel south of the base-line; on the west by the first guide-meridian west; and on the north by the boundary-line between the States of Kansas and Nebraska.

70. Cawker.

Northwestern land-district embraces all that portion of the State of Kansas lying west of the first guide-meridian west of the sixth principal meridian and north of the second standard parallel south of the base-line.

NEBRASKA.

71. West Point

Land-district is bounded as follows: Beginning at the confluence of the Platte River with the Missouri; thence up the Missouri River to the intersection of the line between townships twenty-three and twenty-four north of the base-line; thence west with said township-line to the intersection of the line between ranges twenty-eight and twenty-nine west of the sixth principal meridian; thence south along said range-line to the fifth standard parallel north; thence east with said fifth standard parallel north to the intersection of the line between ranges six and seven east of the sixth principal meridian; thence south with said range-line to the Platte River; thence down with the Platte River to the place of beginning.

72. Beatrice.

Nemaha land-district is bounded on the north by the line between townships six and seven north of the base-line; on the west by the line between ranges eight and nine west of the sixth principal meridian; on the south by the boundary-line between Kansas and Nebraska; and on the east by the Missouri River.

73. Lincoln.

South Platte district is bounded on the south by the line between townships six and seven north of the base-line; on the west by the line between ranges eight and nine west of the sixth principal meridian; on the north by the Platte River; and on the east by the Missouri River.

74. Dakota City.

Dakota land-district is bounded on the south by the line between townships twenty-three and twenty-four north of the base-line; on the west by the line between ranges twenty-eight and twenty-nine west of the sixth principal meridian; on the north by the boundary-line between Dakota Territory and the State of Nebraska; and on the east by the Missouri River.

75. Grand Island

Land-district is bounded as follows: Beginning at the corner common to townships twenty and twenty-one north of the base-line, ranges six and seven east of the sixth principal meridian; thence south with said range-line to Platte River; thence up the Platte River to the intersection of the line between ranges twenty-four and twenty-five west of the sixth principal meridian; thence south with said range-line to the second standard parallel north; thence west along said standard parallel to the intersection of the line between ranges twenty-eight and twenty-nine west; thence north with said range-line to the intersection of the line between townships twenty and twenty-one north; thence east with said township line to the place of beginning.

76. North Platte.

Western district embraces all that portion of the State of Nebraska which lies west of range twenty-eight west of the sixth principal meridian, and north of the line between townships eight and nine north of the base-line.

77. Lowell.

Republican Valley district is bounded as follows: Beginning on the base-line, on the range-line between ranges eight and nine west of the sixth principal meridian; thence north with said range-line to the Platte River; thence up said river to the intersection of the line between ranges twenty-four and twenty-five west; thence south with said range-line to the second standard parallel north; thence west with said standard parallel to the western boundary of Nebraska; thence south with the western boundary of Nebraska to the intersection of the base-line; and thence east with said base-line to the place of beginning.

TERRITORY OF NEW MEXICO.

78. Santa Fé.

District of New Mexico is co-extensive with the limits of the Territory of New Mexico.

DAKOTA TERRITORY.

79. Vermillion.

The Yankton land-district is bounded as follows: Beginning at a point on the north bank of Missouri River, on the line between ranges fifty-two and fifty-three west of the fifth principal meridian; thence north along said range-line to the line between townships one hundred and twenty and one hundred and twenty-one north, ranges fifty-two and fifty-three west; thence east with said range-line to the western boundary of the State of Minnesota; thence south with said boundary to the north boundary of Iowa; thence west with said boundary of the State of Iowa to the Big Sioux River; thence down said river to its mouth; thence up the middle channel of the Missouri River to the point opposite the place of beginning; and thence north to the point of beginning.

80. Springfield

Land-district is bounded as follows: Beginning at a point of the intersection of the line between ranges fifty-seven and fifty-eight west of the fifth principal meridian with the Missouri River; thence north with said range-line to the intersection of the line between townships one hundred and twenty and one hundred and twenty-one north; thence west on said township-line to the west boundary of Dakota Territory; thence south with said boundary to the south boundary of the Territory of Dakota; thence east with the south boundary of Dakota to the place of beginning.

81. Pembina

Land-district is bounded on the east by the western boundary of the State of Minnesota; on the south by the line between townships one hundred and twenty and one hundred and twenty-one north of the base-line, extending west from the west boundary of the State of Minnesota to the intersection of the line between ranges fifty-two and fifty-three west of the fifth principal meridian; thence north with said range-line to the forty-sixth parallel of north latitude; thence west along said parallel to the line between ranges fifty-seven and fifty-eight west; thence south along said range-line to the intersection of the line between townships one hundred and twenty and one hundred and twenty-one north; thence west along said township-line to the west boundary of Dakota Territory;

thence north with said boundary to the forty-ninth parallel of north latitude; and thence east with said parallel to the western boundary of the State of Minnesota.

82. Yankton

Land-district is bounded as follows: Beginning at a point on the north bank of Missouri River at the intersection of the line between ranges fifty-two and fifty-three; thence north along said range-line to the forty-sixth parallel of north latitude; thence west along said parallel to the line between ranges fifty-seven and fifty-eight; thence south along said range-line to the Missouri River; thence easterly along the north bank of said stream to the place of beginning.

COLORADO TERRITORY.

83. Pueblo.

Arkansas Valley land-district embraces all that part of the Territory of Colorado falling within the following limits: Beginning on the east boundary of the Territory of Colorado at a point where the second correction-line south intersects the same; running thence west on the said correction-line to the line dividing ranges numbered seventy-five and seventy-six west of the sixth principal meridian; thence south with said range-line to the third correction-line south; thence west on said line to the western boundary of the Territory; thence south to the southern boundary of said Territory; thence east to the eastern boundary of said Territory; and thence north to the point of beginning.

84. Denver City

Land-district is bounded as follows: Beginning at a point where the summit of the Rocky Mountains is intersected by the northern boundary of the Territory of Colorado; thence southerly with said mountains to the north boundary of Boulder County; thence east with said north boundary to the intersection of the line between ranges seventy and seventy-one west of the sixth principal meridian; thence south along said range-line to the intersection of South Platte River; thence up said river to the second correction-line south; thence east along said correction-line to the eastern boundary of the Territory of Colorado; thence north with said eastern boundary to the northern boundary of Colorado; and thence west along said northern boundary of the Territory to the place of beginning.

85. Fair Play

Land-district is bounded as follows: Beginning at a point where the second correction-line south of the base-line intersects South Platte River; thence down said river to the boundary-line between Clear Creek and Park Counties; thence north with said boundary to the intersection of the first correction-line south; thence west along said correction-line to the western boundary of the Territory of Colorado; thence south with said western boundary to the intersection of the third correction-line south; thence east with said correction-line to the line between ranges seventy-five and seventy-six west of the sixth principal meridian; thence north along said range-line to the intersection of the second correction-line south; and thence east to the place of beginning.

86. Central City

Land-district is composed of the counties of Clear Creek and Gilpin; all that part of Boulder and Jefferson Counties lying west of the line between ranges

seventy and seventy-one west of the sixth principal meridian; and all that part of Summit County, Colorado, which lies north of the first correction-line south of the base-line.

IDAHO TERRITORY.

87. Boise City.

Idaho land-district comprises all that part of the Territory of Idaho which lies south of the Salmon range of mountains, to which the Indian title is, or shall be, extinguished.

88. Lewiston

Land-district consists of all that portion of the Territory of Idaho lying north of the Salmon River range of mountains.

MONTANA TERRITORY.

89. Helena.

Montana land-district consists of all the public lands within the Territory to which the Indian title is, or shall be, extinguished.

UTAH TERRITORY.

90. Salt Lake City.

Utah land-district consists of all the public lands within the Territory.

WYOMING TERRITORY.

91. Cheyenne City.

Wyoming land-district consists of all the public lands embraced within the limits of the Territory.

ARIZONA TERRITORY.

92. Office to be located as the President may direct.

The Gila land-district embraces all that portion of the Territory within the following limits, to wit: Commencing at the eastern boundary of the Territory, at the intersection of the first standard-line north; and running thence west on that line to the western boundary of the Territory; thence south with said boundary-line to the southern boundary of the Territory; thence east on said line to the eastern boundary of the Territory; and thence north on said line to the place of beginning.

93. Prescott.

Arizona land-district consists of all the public lands within the Territory, not described above in the Gila land-district. [R. S.]

The number and composition of the land districts has changed from year to year.— So far as such changes and additions have been directly made by Act of Congress, they are shown in the following Acts, which have been grouped for convenience in alphabetical order of states and territories.

Where public lands are.—“The public lands of the United States are included within the states of Alabama, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Ore-

gon, South Dakota, Utah, Washington, Wisconsin, and Wyoming, the territories of Arizona, New Mexico, and Oklahoma, and the District of Alaska. In Ohio, Indiana, and Illinois the public land has practically all been disposed of, but at rare intervals the attention of this office is called to some isolated tract the title to which is found to be in the government." *Circular from General Land Office of Jan. 25, 1904.*

The local land offices as constituted (Jan. 25, 1904), are as follows:

Alabama — Huntsville; Montgomery.

Alaska — Juneau.

Arizona — Prescott; Tucson.

Arkansas — Camden; Dardanelle; Harrison; Little Rock.

California — Eureka; Independence; Los Angeles; Marysville; Redding; Sacramento; San Francisco; Stockton; Susanville; Visalia.

Colorado — Akron; Del Norte; Denver; Durango; Glenwood Springs; Gunnison; Hugo; Lamar; Leadville; Montrose; Pueblo; Sterling.

Florida — Gainesville.

Idaho — Blackfoot; Boise; Cœur d'Alene; Hailey; Lewiston.

Iowa — Des Moines.

Kansas — Colby; Dodge City; Topeka; Wakeeney.

Louisiana — Natchitoches; New Orleans.

Michigan — Marquette.

Minnesota — Cass Lake; Crookston; Duluth; St. Cloud.

Mississippi — Jackson.

Missouri — Boonville; Ironton; Springfield.

Montana — Bozeman; Great Falls; Helena; Kalispell; Lewistown; Miles City; Missoula.

Nebraska — Alliance; Broken Bow; Lincoln; McCook; North Platte; O'Neill; Sidney; Valentine.

Nevada — Carson City.

New Mexico — Clayton; Las Cruces; Roswell; Santa Fé.

North Dakota — Bismarck; Devil's Lake; Dickinson; Fargo; Grand Forks; Minot.

Oklahoma — Alva; El Reno; Guthrie; Kingfisher; Lawton; Mangum; Woodward.

Oregon — Burns; Lagrange; Lakeview; Oregon City; Roseburg; The Dalles.

South Dakota — Aberdeen; Chamberlain; Huron; Mitchell; Pierre; Rapid City; Watertown.

Utah — Salt Lake City.

Washington — North Yakima; Olympia; Seattle; Spokane; Vancouver; Walla Walla; Waterville.

Wisconsin — Ashland; Eau Claire; Wausau.

Wyoming — Buffalo; Cheyenne; Douglas; Evanston; Lander; Sundance.

See *Circular General Land Office, Jan. 25, 1904.*

SEC. 3. [Office of recorder of land titles in Missouri discontinued — records.] That whenever the Secretary of the Interior shall be of the opinion that the public interest no longer requires the continuance of the office of recorder of land titles in Missouri, he may close and discontinue the same; and all of the records, maps, plats, field-notes, books, papers, and everything else concerning, pertaining, or belonging to said office of recorder, shall be delivered to the State of Missouri: *Provided, however,* That said State shall provide by law for the reception and safe-keeping of said records, maps, plats, field-notes, books, papers, and everything else belonging to said office of recorder, as public records, and for the allowance of free access to the same by the authorities of the United States, for the purpose of taking extracts therefrom, or making copies thereof, without charge of any kind: *And provided further,* That when said office of recorder shall be closed and discontinued as aforesaid, the Commissioner of the General Land-Office shall forever thereafter possess and exercise all of the powers and authority and perform all the duties of said recorder. [18 Stat. L. 62.]

This is from the Act of June 6, 1874, ch. 223, set forth *infra*, div. XIX.

See following text.

The state of Missouri, by Act of April 28,

1877, made provisions for the reception and safe keeping of the records, maps, etc., of the recorder's office, as by this Act required.

[Land Offices in Ohio, Indiana, and Illinois and office of recorder of land titles in Missouri abolished.] * * * That the land offices at Chillicothe, Ohio, Indianapolis, Indiana, Springfield, Illinois, and the office of recorder of land-titles of the State of Missouri, are hereby abolished, from and after the

thirtieth day of September next and the Secretary of the Interior is hereby authorized to transfer to the States respectively aforesaid such of the transcripts, documents, and records of the offices aforesaid as may not be required for the use of the United States, and as the States respectively in which said offices are situated may desire to preserve; * * * [19 Stat. L. 121.]

This is from the Sundry Civil Appropriation Act of July 31, 1876, ch. 246.

An act to create an additional land district in the Territory of Colorado.

[Act of June 20, 1874, ch. 341, 18 Stat. L. 122.]

[SEC. 1.] [*Colorado — Del Norte land district.*] That all that part of the Territory of Colorado commencing at a point on the south boundary line of Colorado Territory between ranges sixty-nine and seventy west of the sixth principal meridian; thence running north to the northern boundary of township twenty-eight south; thence west, on a line between townships twenty-seven and twenty-eight south, to the western boundary of range seventy-three west; thence north, on said boundary of range seventy-three west, to a point where the line between townships forty-eight and forty-nine north, New Mexico meridian, will intersect the same; thence west, between said townships forty-eight and forty-nine north, to the western boundary of the Territory; thence south, with said boundary line, to the southwest corner of the Territory; thence east, on the line of the southern boundary of the Territory, to the place of beginning, shall constitute a separate land district, to be called Del Norte land district, the office of which shall be located at Del Norte, in Conejos County: *Provided*, That the President of the United States may change the location of said land office from time to time, as the public interest may require. [18 Stat. L. 122.]

SEC. 2. [*Register and receiver.*] That the President shall appoint, by and with the advice and consent of the Senate, a register and a receiver of public moneys for said district; and said officers shall reside in the place where said land office is located, and shall have the same powers and shall receive the same fees and emoluments as the like officers now receive in the other land districts in said Territory. [18 Stat. L. 122.]

SEC. 3. [*Unfinished business in other districts.*] That all persons in said district who, prior to the opening of said Del Norte land office, shall have filed their declaratory statement or application for pre-emption or homestead rights in any other land office in said Territory, shall thereafter make proofs and entries at said Del Norte land office; and all unfinished business in any other land office relating exclusively to lands in said Del Norte land district shall be transferred to said Del Norte land office when notified by the officers of the opening thereof. [18 Stat. L. 122.]

An act to establish a land-office at Lamar, Colorado.

[Act of Aug. 4, 1886, ch. 895, 24 Stat. L. 218.]

[SEC. 1.] [*Colorado — Bent land district with office at Lamar.*] That all that portion of the State of Colorado bounded and described as follows: Commencing at a point on the eastern boundary-line of said State where the second correction-line south intersects said boundary-line, and running thence on said second correction-line south to the line dividing ranges numbered fifty-two and

fifty-three; thence south on said range-line to the southern boundary-line of said State; thence east on the southern boundary-line of said State to the eastern boundary-line of said State; thence north on the eastern boundary-line of said State to the place of beginning, be, and is hereby, constituted a new and separate land district, to be called the Bent land-district, the land office for which shall be located in the town of Lamar, county of Bent, in the said State of Colorado. [24 Stat. L. 218.]

SEC. 2. [*Register and receiver.*] That the President, by and with the advice and consent of the Senate, shall appoint a register and a receiver of public moneys for said district; and said officers shall reside in the place where said land office is located, and shall have the same powers and shall discharge similar duties and receive the same fees and emoluments as other officers discharging like duties in the other land-offices of the State of Colorado. [24 Stat. L. 218.]

An act creating three additional land offices in the State of Colorado.

[Act of Feb. 6, 1890, ch. 7, 26 Stat. L. 5.]

[SEC. 1.] [*Colorado — Sterling land district.*] That all that portion of the State of Colorado bounded and described as follows: Commencing at the northeast corner of the State of Colorado; thence west along the north boundary line of said State to a point at the intersection of said line with the west line of range fifty-nine west; thence south along said west line of said range to its intersection with the first corrected line north in said State of Colorado; thence east along said first corrected line north to the eastern boundary line of said State of Colorado; thence north along the eastern boundary line of said State to the place of beginning, be, and is hereby, constituted a new land district, to be called the Sterling land district. [26 Stat. L. 5.]

SEC. 2. [*Akron land district.*] That all that portion of the State of Colorado bounded and described as follows: Beginning at the point where the first corrected line north in the said State intersects the eastern boundary line thereof; thence west along said corrected line north to its intersection with the seventh guide meridian west in said State; thence south along said seventh guide meridian to the point of its intersection with the first corrected line south in said State; thence east along said first corrected line to the point of its intersection with the eastern boundary line of said State; thence north along said eastern boundary line of said State to the place of beginning, be, and is hereby, constituted a new land district, to be called the Akron land district. [26 Stat. L. 5.]

SEC. 3. [*Hugo land district.*] That all that portion of the State of Colorado lying east of the seventh guide meridian west, south of the first corrected line south, and north of the third corrected line south, be, and is, constituted a new land district. [26 Stat. L. 6.]

SEC. 4. [*Land offices.*] That the President shall designate the place in each district at which the land office for that district shall be located. [26 Stat. L. 6.]

The offices have been located at Sterling, Akron, and Hugo, respectively.

SEC. 5. [*Register and receivers — changes.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a

register and a receiver for each of the said land districts hereby created, who shall discharge like and similar duties and receive the same amount of compensation therefor as other officers discharging like duties in the land offices of the State of Colorado; and said land districts shall be subjected, as other land districts are, under the laws, to be changed or consolidated with any other district or districts, and the land offices may be changed to any other location by order of the President. [26 Stat. L. 6.]

An act to establish the Bismarck land district in the Territory of Dakota.

[Act of April 24, 1874, ch. 127, 18 Stat. L. 34.]

[SEC. 1.] [*Dakota — Bismarck land district.*] That all that portion of Dakota Territory lying north of the seventh standard parallel and west of the ninth guide-meridian be, and the same is hereby, created into a separate land district, to be known as the Bismarck district; and the land office for said district shall be located at the town of Bismarck, where the North Pacific Railroad intersects the Missouri River. [18 Stat. L. 34.]

SEC. 2. [*Register and receiver.*] That a register and a receiver shall be appointed for said district land office, who shall be governed by the same laws and receive the same compensation as prescribed for similar officers in the other land districts of said Territory. [18 Stat. L. 34.]

An act to establish a land-district in the Territory of Dakota, and locating the office at Grand Forks.

[Act of Jan. 21, 1880, ch. 8, 21 Stat. L. 60.]

[SEC. 1.] [*Dakota — Grand Forks land district.*] That all that portion of the Territory of Dakota lying and being north of the twelfth standard parallel and east of the tenth guide meridian shall constitute a new land-district, to be known as the Grand Forks district. [21 Stat. L. 60.]

SEC. 2. [*Register and receiver.*] The President is hereby authorized to appoint, in the manner provided by law, a register and a receiver for said district, who shall be required to reside in Grand Forks, in the county of Grand Forks, until such time as the President may, in his discretion, remove the site of said land-office from said Grand Forks; and said register and said receiver shall be subject to the same laws and entitled to the same compensation as is or may be provided by law in relation to existing land offices and officers of said Territory. [21 Stat. L. 60.]

An act to create two additional land districts, and to change the boundaries of the Watertown land district in the Territory of Dakota.

[Act of March 23, 1882, ch. 49, 22 Stat. L. 33.]

[SEC. 1.] [*Dakota — Huron land district.*] That all that part of the Territory of Dakota bounded as follows, to wit: Commencing at the southeast corner of township one hundred and nine north, range fifty-nine west of the fifth principal meridian; thence west along the second standard parallel north to the Missouri river; thence up and along the east bank of said river to a point where the fifth standard parallel north intersects said river; thence east along said standard parallel north to the northwest corner of township

one hundred and twenty north, range fifty-nine west; thence south to the southwest corner of township one hundred and thirteen north, range fifty-nine west; thence east to the southeast corner of said township; thence south to the place of beginning, be, and the same is hereby, constituted a new land district, the office of which shall be located at such place as shall be designated by the President of the United States. [22 Stat. L. 33.]

SEC. 2. [*Aberdeen land district.*] That all that part of the Territory of Dakota bounded as follows, to wit: Commencing at the northwest corner of township one hundred and twenty north, range fifty-nine west of the fifth principal meridian; thence west along the fifth standard parallel north to the Missouri River; thence up and along the east bank of said river to the south line of township one hundred and thirty north; thence east along said line to the northeast corner of township one hundred and twenty-nine north, range fifty-nine west; thence south to the south-east corner of township one hundred and twenty-nine north, range fifty-nine west; thence east along the seventh standard parallel north to the northwest corner of township one hundred and twenty-eight north, range fifty-nine west; thence south to the place of beginning, be, and the same is hereby, constituted a new land district, the office of which shall be located at such place as shall be designated by the President of the United States. [22 Stat. L. 33.]

SEC. 3. [*Watertown land district.*] That all that part of the Territory of Dakota bounded as follows, to wit: Commencing at a point where the second standard parallel north of the fifth principal meridian intersects the eastern boundary of said Territory; thence west along said parallel to the southeast corner of township one hundred and nine north, range fifty-nine west; thence north to the northeast corner of township one hundred and twelve north, range fifty-nine west; thence west along the third standard parallel north to the eighth guide-meridian; thence north along said guide-meridian to the northwest corner of township one hundred and twenty-eight north, range fifty-nine west; thence west along the seventh standard parallel north to the southeast corner of township one hundred and twenty-nine north, range fifty-nine west; thence north to the southeast corner of township one hundred and thirty north, range fifty-nine west; thence east to the eastern boundary-line of the Territory of Dakota; thence southerly on said boundary-line to the place of the beginning, shall constitute the limits of the Watertown land district. [22 Stat. L. 33.]

An act to create three additional land districts in the Territory of Dakota.

[Act of March 3, 1883, ch. 140, 22 Stat. L. 582.]

[SEC. 1.] [*Dakota — Pierre land district.*] That all that part of the Territory of Dakota bounded as follows, to wit, commencing at the most easterly point where the Missouri River crosses the second standard parallel; thence up and along said river to the most westerly point where said river crosses said parallel; thence west on said parallel to the south fork of the Cheyenne River; thence southwest along said south fork of said Cheyenne River to the twenty sixth degree of longitude west from Washington; thence south to the south boundary of the Territory of Dakota; thence east along said south boundary of said Territory to the Missouri River; thence northwesterly along said river to the place of beginning, be, and the same is hereby, constituted a new land district, and the office shall be located at such place in said district as shall be designated by the President of the United States. [22 Stat. L. 582.]

SEC. 2. [*Chamberlin land district.*] That all that part of the Territory of Dakota bounded as follows, to wit, commencing at the most westerly point where the Missouri River intersects the second standard parallel; thence northerly along said river to the fifth standard parallel; thence west to the twenty-sixth degree of longitude west from Washington; thence south to the north fork of the Cheyenne River; thence east and south along said river to its mouth; thence up and along the south fork of the Cheyenne River to a point where the second standard parallel produced would intersect said river; thence east to the, Missouri River, at the place of beginning, be, and the same is hereby, constituted a new land district, and the office shall be located at such place in said district as shall be designated by the President of the United States. [22 Stat. L. 582.]

SEC. 3. [*Devil's Lake land district.*] That all that part of the Territory of Dakota bounded as follows, to wit, commencing at a point on the twelfth standard parallel between ranges sixty three and sixty four; thence north to the north boundary of the Territory of Dakota; thence west along said boundary to the eleventh guide meridian; thence south along said meridian to the twelfth standard parallel; thence east to the place of beginning, be, and the same is hereby, constituted a new land district, and the office in said district shall be located at such place as shall be designated by the President of the United States. [22 Stat. L. 582.]

SEC. 4. [*Registers and receivers.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and a receiver for each of said land districts, who shall discharge like and similar duties and receive the amount of compensation allowed by law to other officers discharging like duties in the land offices of said Territory; *Provided* That such officers shall not be appointed nor land offices opened in the districts created by the first and second sections of this act until a cession shall have been made by treaty duly ratified by Congress of a portion of the Great Sioux Indian Reservation within the limits of the said districts. [22 Stat. L. 582.]

An act creating an additional land office in the State of North Dakota.

[*Act of Sept. 26, 1890, ch. 946, 26 Stat. L. 485.*]

[SEC. 1.] [*North Dakota — Minot land district.*] That all that portion of the State of North Dakota, bounded and described as follows: Commencing at the northwest corner of the State of North Dakota; thence east along the north boundary of said State to a point at the intersection of said line with the eleventh guide meridian; thence south along said meridian to the twelfth standard parallel; thence west along said parallel, when produced, to the western boundary line of said State of North Dakota; thence north along the western boundary line of said State to the place of beginning, be, and is hereby, constituted a new land district, to be called the Minot land district. [26 Stat. L. 485.]

SEC. 2. [*Land office.*] That the President shall designate the place in the district at which the land office shall be located. [26 Stat. L. 485.]

SEC. 3. [*Register and receiver — district and office may be changed.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and receiver for said land district hereby created, who shall discharge like and similar duties and receive the same amount of compensation therefor as other officers dis-

charging like duties in the land offices of the State of North Dakota; and said land district shall be subjected, as other land districts are, under the laws, to be changed or consolidated with any other district or districts, and the land office may be changed to any other location by order of the President. [28 Stat. L. 485.]

An act to create an additional land-district in the Territory of Idaho.

[Act of Feb. 4, 1879, ch. 48, 20 Stat. L. 282.]

[SEC. 1.] [*Idaho — Oneida land district with office at Oxford.*] That all that portion of the Territory of Idaho described and bounded as follows, namely: Commencing at the southeastern corner of said Territory: thence running west on the line between said Territory and the Territory of Utah to the line between ranges numbered twenty-three and twenty-four east, Boise meridian; thence north to the southern boundary of Lemhi County; thence west to the western line of said Lemhi County; thence north on said western line of said county to the line between the Territories of Idaho and Montana; thence easterly on said Territorial line to the eastern boundary of the Territory of Idaho; thence south on the line of the eastern boundary of Idaho Territory to the place of beginning, shall constitute a separate land district, to be called Oneida land-district, the office of which shall be located at Oxford, in Oneida County: *Provided*, The President of the United States may change the location of said land-office, from time to time, as the public interests may require. [20 Stat. L. 282.]

SEC. 2. [*Register and receiver.*] That the President shall appoint, by and with the advice and consent of the Senate, or during the recess thereof, a register and a receiver of public moneys for said district; and said officers shall reside in the place where said land-office is located, and shall have the same powers and responsibilities; and shall receive the same fees and emoluments as like officers now receive in other land-offices in said Territory. [20 Stat. L. 282.]

SEC. 3. [*Unfinished business of district transferred.*] That all persons in said district who, prior to the opening of said Oneida land-office, shall have filed their declaratory statements, or application for pre-emption, homestead, or other land rights, in any land-office, in said Territory of Idaho, shall hereafter make proofs and entries at said Oneida land-office; and all unfinished business in any other land-office relating exclusively to lands in said Oneida land-district shall be transferred to said Oneida land-office when notified by the officers of the opening thereof. [20 Stat. L. 282.]

An act to create two additional land districts in the state of Kansas.

[Act of June 20, 1874, ch. 340, 18 Stat. L. 121.]

[SEC. 1.] [*Kansas — western land district.*] That all the western portion of the State of Kansas, included as follows, to wit, commencing at the northeast corner of township ten of range sixteen, and running thence west to the western boundary of the State; thence south along said boundary line, to the fourth standard parallel; thence east along said parallel line, to the southeast corner of Rush County; thence north to the place of beginning, be, and hereby is, constituted a new land district, to be called the western land district. [18 Stat. L. 121.]

SEC. 2. [*Arkansas Valley land district.*] That all the western portion of the State of Kansas, included as follows, to wit, commencing at the northeast corner of Barton County, and running thence west to the northwest corner of said county; thence south to the southwest corner of said county; thence west along the fourth standard parallel line to the western boundary of the State; thence south along said boundary-line to the southern boundary of the State; thence east along said boundary-line to the southeast corner of Barbour County; thence north to the place of beginning, be, and hereby is, constituted a new land-district, to be called the Arkansas Valley land-district; and shall, in addition, include in the district the lands lying in Rice and Reno counties. [18 Stat. L. 122.]

SEC. 3. [*Registers and receivers.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and a receiver for each of said districts who shall discharge like and similar duties and receive the same amount of compensation allowed to other officers discharging like duties in the other land offices of said State. [18 Stat. L. 122.]

An act to create an additional land district in the State of Kansas.

[*Act of May 24, 1880, ch. 100, 21 Stat. L. 141.*]

[SEC. 1.] [*Kansas — Northern land district.*] That all that portion of the northwestern land district in the State of Kansas, lying and being situated west of the third guide meridian west of the sixth principal meridian, be, and hereby is, constituted a new land district, to be called the northern land district. [21 Stat. L. 141.]

SEC. 2. [*Register and receiver.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and a receiver for said district, who shall discharge like and similar duties, and receive the same amount of compensation allowed to other officers discharging like duties in the other land-offices of said State. [21 Stat. L. 141.]

An act to establish an additional land district in the State of Kansas.

[*Act of March 3, 1881, ch. 146, 21 Stat. L. 508.*]

[SEC. 1.] [*Kansas — southwestern land district.*] That the following described territory in the State of Kansas, to wit: commencing at the southeast corner of township thirty-five, south range thirty-one west of the sixth principal meridian on the south boundary of the State of Kansas; thence west on said southern boundary to the western boundary of said State; thence north on said western boundary to the fourth standard parallel south; thence east along said parallel to the northeast corner of township twenty-one south, range thirty-one west, and thence south to the place of beginning, in the State of Kansas, shall constitute an additional land district, to be called the southwestern land district, the location for the office of which shall be designated by the President of the United States, and shall by him from time to time be changed, as the public interest may seem to require. [21 Stat. L. 508.]

SEC. 2. [*Register and receiver.*] That the President be, and he hereby is, authorized, whenever the public interest shall require, to appoint, in accordance with existing laws authorizing appointment to office, a register and a receiver for the district hereby created, who shall each be required to reside

at the site of the office for said district, have the same powers, responsibilities, and emoluments, and be subject to the same acts and penalties which are, or may be, prescribed by law in relation to other land-offices of the United States. [21 Stat. L. 508.]

SEC. 3. [*Business of the old districts confirmed.*] That all sales and locations made at the offices of the districts in which the lands embraced in this district have hitherto been included, situated wholly within the limits of this district, which shall be valid and right in other respects up to the day on which the new office shall go into operation, be, and the same are hereby, confirmed. [21 Stat. L. 509.]

An act to create the Bozeman land district in the Territory of Montana.

[Act of June 20, 1874, ch. 342, 18 Stat. L. 123.]

[SEC. 1.] [*Montana — Bozeman land district.*] That all that portion of the Territory of Montana, lying east of the range line between ranges two and three west of the principal meridian and south of the first standard parallel north of the base line, of the public land surveys of said Territory, shall be constituted a separate land district, to be known as the Bozeman land district, the office of which shall be located at Bozeman, but may be changed from time to time, by the direction of the President of the United States, as the interests of the public service may require. [18 Stat. L. 123.]

SEC. 2. [*Register and receiver.*] That the President shall appoint, by and with the consent of the Senate, a register and a receiver of the public moneys of the United States for said district; and said officers shall reside in the place where the land office is located, and they shall have the same powers and receive the same emoluments as are or may be prescribed by law in relation to land officers of the United States in other Territories. [18 Stat. L. 123.]

An act for the establishment of a land-office in the Territory of Montana.

[Act of April 30, 1880, ch. 71, 21 Stat. L. 81.]

[SEC. 1.] [*Montana — Yellowstone land district with office at Miles City.*] That all that portion of the Territory of Montana which lies east of the twenty-seventh range east of the principal meridian which is not now or hereafter may be included in any Indian reservation, be, and the same is hereby, designated as the district of the Yellowstone, and constituted a separate land district, with a United States land-office at Miles City, within said district. [21 Stat. L. 81.]

SEC. 2. [*Register and receiver.*] The President shall appoint a register and receiver for said office, who shall be entitled to such compensation as is now provided by law, which compensation shall be paid from the fund appropriated for such purposes. [21 Stat. L. 81.]

An act to establish two additional land offices in the State of Montana.

[Act of April 1, 1890, ch. 60, 26 Stat. L. 33.]

[SEC. 1.] [*Montana — Missoula land district with office at Missoula.*] That all that portion of the State of Montana bounded and described as follows: Commencing at a point on the southern boundary of the State where the line

between ranges fourteen and fifteen west of the Montana principal meridian intersects said boundary, and running north along said line to the northern boundary line of the State; thence with said boundary line to the northwest corner of the State; thence southwardly along the boundary line between Montana and Idaho, to the place of beginning, be, and the same is hereby, constituted a new land district, to be called Missoula land district of the State of Montana, and the land office for said district shall be located at the town of Missoula. [26 Stat. L. 33.]

SEC. 2. [*Judith land district with office at Lewistown.*] That all that portion of the State of Montana commencing at that point on the first standard parallel north, where the range line between townships twenty-seven and twenty-eight east of the principal meridian intersects the same; thence running north along said range line to the southern bank of the Missouri River; thence westerly along said river to the point where the range line between ranges twelve and thirteen east of the principal meridian intersects said river; thence south along said range line, between ranges twelve and thirteen east, to the first standard parallel north, and thence east along said standard parallel to the place of beginning, be, and the same is hereby, constituted a new land district, to be called the Judith land district, in the State of Montana, and the land office for said district shall be located at the town of Lewistown. [26 Stat. L. 33.]

This section was amended by joint resolution of Aug 8, 1890, No. 36, 26 Stat. L. 677, to correct the clerical error in the spelling

of "Lewistown," it having been spelled "Lewiston" in the section as originally enacted.

SEC. 3. [*Registers and receivers.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint registers and receivers for such land districts, who shall discharge like and similar duties and receive the same amount of compensation as other officers discharging like duties in the other land offices of said State. [26 Stat. L. 34.]

An Act To establish an additional land office in the State of Montana.

[*Act of March 2, 1897, ch. 355, 29 Stat. L. 602.*]

[SEC. 1.] [*Montana — Flathead land district with office at Kalispell.*] That all that portion of the State of Montana bounded and described as follows: Beginning at a point on the national boundary line where the same would be intersected by the range line between ranges fourteen and fifteen west of the Montana principal meridian when projected (this line being the present boundary between the Helena and Missoula land districts); thence south on said range line between ranges fourteen and fifteen west to the southeast corner of township twenty-two north, range fifteen west; thence west on township line between townships twenty-one and twenty-two north to the southwest corner of township twenty-two north, range twenty-three west; thence north on range line between ranges twenty-three and twenty-four west to the sixth standard parallel north; thence west on said standard parallel to the southwest corner of township twenty-five north, range twenty-six west; thence north on range line between ranges twenty-six and twenty-seven west to northeast corner of township twenty-six north, range twenty-seven west; thence west on township line between townships twenty-six and twenty-seven north to the northeast corner of township twenty-six north, range thirty west; thence north on range line between ranges twenty-nine and thirty west to northeast corner of township twenty-seven north, range thirty west; thence west on township

line between townships twenty-seven and twenty-eight north to the northwest corner of township twenty-seven north, range thirty-one west; thence north on range line between ranges thirty-one and thirty-two west to the seventh standard parallel north; thence west along the seventh standard parallel north to the western boundary of the State; thence north on said boundary line to the northwest corner of the State on the national boundary line on the forty-ninth parallel, north latitude; and thence east on said national boundary line to the place of beginning, be, and the same is hereby constituted a new land district, to be called Flathead land district of the State of Montana, and the land office for said district shall be located at the town of Kalispell. [29 Stat. L. 602.]

SEC. 2. [*Register and receiver.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and receiver for such land district, who shall discharge like and similar duties and receive the same amount of compensation as other officers discharging like duties in the other land offices of said State. [29 Stat. L. 603.]

An Act To establish an additional land office in the State of Montana.

[Act of April 28, 1902, ch. 595, 32 Stat. L. 171.]

[SEC. 1.] [*Montana — Great Falls land district with office at Great Falls.*] That all that portion of the State of Montana bounded and described as follows: Beginning at the northeast corner of the State and running thence west on the national boundary line between the United States and British possessions to the point intersected by the eastern boundary line of the Blackfeet Indian Reservation; thence south along the line of said reservation to where it is intersected by the eastern line of the Lewis and Clark Forest Reservation; thence south on said line to the southwest corner of township twenty-two north, range eight west; thence east along the line between townships twenty-one and twenty-two north to the northeast corner of township twenty-one north, range four west; thence south along the line between ranges three and four west to the northeast corner of township fourteen north, range four west; thence east along the line between townships fourteen and fifteen north to the southeast corner of township fifteen north, range three east; thence north to the northeast corner of said township; thence east along the line between townships fifteen and sixteen north to the southeast corner of township sixteen north, range ten east; thence north along the line between ranges ten and eleven east to the northeast corner of township eighteen north, range ten east; thence east along the line between townships eighteen and nineteen north to the northeast corner of township eighteen north, range twelve east; thence north along the line between ranges twelve and thirteen east to the Missouri River; thence south and east, following the Missouri River to the east line of the State of Montana; thence north along said line to the place of beginning, be, and the same is hereby, constituted a new land district, to be called Great Falls land district of the State of Montana; and the land office for said district shall be located at the town of Great Falls. [32 Stat. L. 171.]

SEC. 2. [*Register and receiver.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and receiver for such land district, who shall discharge like and similar duties and receive the same amount of compensation as other officers discharging like duties in the other land offices of said State. [32 Stat. L. 172.]

An act to create two additional land-districts in the State of Nebraska.

[*Act of June 19, 1882, ch. 230, 22 Stat. L. 106.*]

[SEC. 1.] [*Nebraska — Minnekadusa land district.*] That all that portion of the State of Nebraska bounded and described as follows: Beginning where the second guide-meridian west intersects the northern boundary of the State of Nebraska; thence south along said guide-meridian to the southeast corner of township twenty-six north, range seventeen west; thence west to the southeast corner of township twenty-six north, range twenty-one west; thence south to the southeast corner of township twenty-five north; range twenty-one west; thence west to the western boundary of the State; thence north to the north line of the State; thence east along said line to the place of beginning, be, and hereby is, constituted a new land-district, to be called the Minnekadusa land-district, the land-office for which shall be located at such place as the President may direct. [*22 Stat. L. 106.*]

SEC. 2. [*Hitchcock land district.*] That all that portion of the State of Nebraska bounded and described as follows: Beginning on the south boundary of the State of Nebraska, on the range-line between ranges twenty-five and twenty-six west; thence north along said range-line to the second standard parallel; thence west along said standard parallel to the western boundary of the State; thence south along said boundary to the south line of the State; thence along said south line east to the place of beginning, is hereby constituted an additional land-district, to be called the Hitchcock land-district, the land-office for which shall be located at such place as the President may direct. [*22 Stat. L. 106.*]

SEC. 3. [*Register and receiver.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and a receiver for each of said land-districts, who shall discharge like and similar duties and receive the same amount of compensation as other officers discharging like duties in the other land-offices of said State. [*22 Stat. L. 106.*]

An act to establish two additional land-districts in the State of Nebraska.

[*Act of May 3, 1886, ch. 81, 24 Stat. L. 20.*]

[SEC. 1.] [*Nebraska — northwest land district.*] That all that portion of the State of Nebraska bounded and described as follows: Commencing on the west boundary of the State of Nebraska at the intersection of the township line between townships numbered twenty-three and twenty-four north, sixth principal meridian; thence east along the township line between said townships to the fifth guide-meridian west; thence north along said guide-meridian to the north boundary of the State of Nebraska; thence west along said boundary to the northwest corner of the State; thence south along the west boundary of the State to the place of beginning, be, and is hereby, constituted a new land-district, to be called the northwest land-district of the State of Nebraska, the land-office for which shall be located at such place as the President may direct. [*24 Stat. L. 20.*]

SEC. 2. [*Sydney land district.*] That all that portion of the State of Nebraska bounded and described as follows: Beginning on the west boundary of the State of Nebraska at the point of the intersection of the township-line between townships numbered twenty-three and twenty-four north, sixth principal

pal meridian; thence east along the township-line between said townships to the fifth guide-meridian west; thence south on said fifth guide-meridian to the southeast corner of township twelve north, range forty-one west; thence west on the township-line between townships eleven and twelve north to the west boundary of the State of Nebraska; thence north to the northeast corner of the State of Colorado; thence west along the north boundary of Colorado to the west boundary of the State of Nebraska; thence north along the west boundary of the State of Nebraska to the place of beginning, be, and is hereby, constituted a new land-district, to be called the Sydney land-district of the State of Nebraska, the land-office for which shall be located at such place as the President may direct. [24 Stat. L. 20.]

SEC. 3. [*Registers and receivers.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint registers and receivers for such land-districts, who shall discharge like and similar duties and receive the same amount of compensation as other officers discharging like duties in the other land-offices of said State. [24 Stat. L. 20.]

An act to establish two additional land districts in the State of Nebraska.

[Act of April 16, 1890, ch. 83, 26 Stat. L. 55.]

[SEC. 1.] [*Nebraska — Broken Bow land district.*] That all that portion of the State of Nebraska bounded and described as follows: Commencing at a point where the fifth guide meridian west of the sixth principal meridian intersects the line between townships twenty-six and twenty-seven north; thence east along said line to the northeast corner of township twenty-six north, of range twenty-one west; thence south to the fifth standard parallel north; thence east along said standard parallel to the second guide meridian west; thence south to the fourth standard parallel north; thence west to the southwest corner of township seventeen north, of range twenty-seven west; thence north to the northeast corner of township eighteen north, of range twenty-eight west; thence west to the fifth guide meridian west; and thence north along said fifth guide meridian west to the place of beginning, be, and the same is hereby, constituted a new land district, to be called the Broken Bow land district, the land office for which shall be located at Broken Bow, in the State of Nebraska. [26 Stat. L. 55.]

SEC. 2. [*Alliance land district.*] That all that portion of the State of Nebraska bounded and described as follows: Commencing at a point where the line between townships twenty-seven and twenty-eight north intersects the western boundary of the State; thence east along said township line to the northeast corner of township twenty-seven north, of range forty-one west; thence south to the southeast corner of township nineteen north, of range forty-one west; thence west to the southwest corner of township nineteen north, of range forty-five west, all of the sixth principal meridian; thence north to the fifth standard parallel north; thence west along said fifth standard parallel north to the western boundary of the State; and thence along said boundary line to place of beginning, be, and the same is hereby, constituted a new land district, to be called the Alliance land district, the land office for which district shall be located at Alliance, in the State of Nebraska. [26 Stat. L. 56.]

SEC. 3. [*Registers and receivers — changes in districts or location of offices.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and receiver for each of the said land

districts hereby created, who shall reside in the places where the land offices are located, and shall discharge like and similar duties and receive the same amount of compensation therefor as other officers discharging like duties in the land offices of the State of Nebraska; and said land districts shall be subject, as other land districts are, under the laws, to be changed or consolidated with any other district or districts, and the land offices may be changed to any other location by order of the President. [26 Stat. L. 56.]

An act creating an additional land district in the Territory of New Mexico.

[Act of March 3, 1874, ch. 43, 18 Stat. L. 18.]

[SEC. 1.] [*New Mexico — La Messilla land district.*] That all that portion of the Territory of New Mexico lying south of the principal base line of said Territory shall constitute a separate land district, to be called the La Messilla land-district, the office of which shall be located at such place in said district as the President of the United States may direct, which may be changed from time to time as the public interest may require. [18 Stat. L. 18.]

SEC. 2. [*Register and receiver.*] That the President shall appoint, by and with the advice and consent of the Senate, a register and receiver of public moneys for said district, and said officers shall reside in the place where said land-office is located, and they shall have the same powers, perform the same duties, and receive the same emoluments as are or may be prescribed by law in relation to land offices of the United States in other Territories. [18 Stat. L. 19.]

An act to establish a land office at Folsom, in the Territory of New Mexico.

[Act of Dec. 18, 1888, ch. 6, 25 Stat. L. 637.]

[SEC. 1.] [*New Mexico — Colfax land district with office at Folsom.*] That all that portion of the Territory of New Mexico bounded and described as follows: Commencing at the northeastern corner of said Territory and running thence west on the northern boundary line of said Territory to the line dividing ranges numbered twenty-four and twenty-five, thence south on said range line to the principal base-line running east and west through said Territory, thence east on said base-line to the eastern boundary line of said Territory, thence north on said eastern boundary line to the place of beginning, be, and is hereby, constituted a new and separate land district, to be called the Colfax land district, the land office for which shall be located in the town of Folsom, County of Colfax, in the said Territory of New Mexico. [25 Stat. L. 637.]

SEC. 2. [*Register and receiver.*] That the President, by and with the advice and consent of the Senate, shall appoint a register and a receiver of public moneys for said district; and said officers shall reside in the place where said land office is located, and shall have the same powers and shall discharge similar duties and receive the same fees and emoluments as officers discharging like duties in the other land offices of the Territory of New Mexico. [25 Stat. L. 638.]

An act to establish the Lincoln Land District in the Territory of New Mexico.

[Act of March 1, 1889, ch. 327, 25 Stat. L. 772.]

[SEC. 1.] [*New Mexico — Lincoln land district with office at Roswell.*] That all that portion of the Territory of New Mexico embraced in the following described boundaries to wit, beginning at a point on the line running north and

south between the State of Texas and the Territory of New Mexico, where such line would be intersected by the township line between townships numbers one and two north of the base line, and running thence west to the south-west corner of San Miguel County along the line between the Counties of Lincoln and San Miguel, said south-west corner being on said line in range number nineteen west of the New Mexico principal meridian, thence north to the south-east corner of Valencia County, a distance of about four miles, thence west on the south line of Valencia County parallel with the line between townships numbered one and two through township number two north to the east line of range number eight east of the New Mexico principal meridian, thence south along said range line between ranges numbered eight and nine east of said principal meridian to the second standard parallel south on the line between townships numbered ten and eleven south of the base line, thence east along said parallel to the line between ranges numbered ten and eleven south of the base line, thence south along said range line to the township line between townships numbered twelve and thirteen south, thence east along said last named line to the meridian of longitude number twenty-eight degrees thirty minutes west from Washington, thence south along said meridian line to the line of the State of Texas, thence east along said line to the south-east corner of the Territory of New Mexico and thence north along the boundary line between the State of Texas and the Territory of New Mexico to the point of beginning, shall be constituted a separate land district to be known as the Lincoln Land District, and the office of said district shall be located at the town of Roswell in said Territory. [25 Stat. L. 772.]

SEC. 2. [*Register and receiver.*] That the President of the United States shall nominate and by and with the advice and consent of the Senate appoint a register and receiver of the public moneys of the United States for said district, who shall reside in the place where said land office is located and shall have the same powers, perform the same duties and receive the same emoluments as are or may be prescribed by laws and regulations in relation to other land officers in the Territories of the United States. [25 Stat. L. 772.]

SEC. 15. [*Oklahoma — land districts.*] That the President may whenever he deems it necessary create not to exceed two land districts embracing the lands which he may open to settlement by proclamation as hereinbefore provided, and he is empowered to locate land offices for the same appointing thereto in conformity to existing law registers and receivers and for the purpose of carrying out this provision five thousand dollars or so much thereof as may be necessary is hereby appropriated. [25 Stat. L. 1006.]

This is from the Indian Department Appropriation Act of March 2, 1889, ch. 412. The lands herein referred to are those acquired or to be acquired as provided in the Act from the Seminole and Cherokee Indians.

SEC. 19. [*Oklahoma — Public Land Strip land district.*] That portion of the Territory of Oklahoma heretofore known as the Public Land Strip is hereby declared a public land district, and the President of the United States is hereby empowered to locate a land office in said district, at such place as he shall select, and to appoint in conformity with existing law a register and receiver of said land office. He may also, whenever he shall deem it necessary, establish another

additional land district within said Territory, locate a land office therein, and in like manner appoint a register and receiver thereof. And the Commissioner of the General Land Office shall, when directed by the President, cause the lands within the Territory to be properly surveyed and subdivided where the same has not already been done. [26 Stat. L. 91.]

This is from the Act of May 2, 1890, ch. 182, "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the

jurisdiction of the United States Court in the Indian Territory, and for other purposes."

SEC. 10. [*Cherokee Outlet — land offices.*] * * * The President of the United States may establish, in his discretion, one or more land offices to be located either in the lands to be opened, or at some convenient place or places in the adjoining organized Territory of Oklahoma; and to nominate, and by and with the advice and consent of the Senate, to appoint registers and receivers thereof. [27 Stat. L. 643.]

This is from the Act of March 3, 1893, ch. 209, "making appropriations for current and contingent expenses, and fulfilling treaty stipulations with Indian tribes, for fiscal year

ending June thirtieth, eighteen hundred and ninety-four." The above provision is taken from the section relating to the purchase of the "Cherokee Outlet."

SEC. 6. [*Land office at Mangum, Oklahoma.*] That there shall be a land office established at Mangum, in said county, upon the passage of this Act. [29 Stat. L. 490.]

This is from the Act of Jan. 18, 1897, ch. 62, set forth *infra*, div. XIII.

SEC. 3. [*Oklahoma — additional land districts.*] The President is hereby authorized to establish two additional United States land districts and land offices in the Territory of Oklahoma, which districts shall include the lands so ceded by the Wichita and affiliated bands of Indians, one of the land offices shall be located at Elreno, in the county of Canadian; and the other shall be located at the county seat nearest Fort Sill. These land districts shall be respectively established at the time of proclaiming the lands aforesaid open to settlement and entry. [31 Stat. L. 1094.]

This is from the Act of March 3, 1901, ch. 846, set forth *infra*, div. VIII.

An act to create an additional land-district in the State of Oregon, to be called the Dalles land-district.

[Act of Jan. 11, 1875, ch. 13, 18 Stat. L. 294.]

[SEC. 1.] [*Oregon — The Dalles land district.*] That the President of the United States be, and he is hereby, authorized to establish an additional land-district in the State of Oregon, which district shall be bounded as follows, viz: Commencing on the Columbia River at the intersection of the range-line, between ranges eight and nine east, thence south on said range-line to the fourth standard parallel, which is the north boundary of the Linkton land-district; thence east on said parallel to range twenty-seven east; thence north on range-

line between ranges twenty-six and twenty-seven to the Columbia River; thence down said river to the place of beginning, comprising all that land in Oregon situate north of the Linkton land-district and between ranges eight and twenty-seven east of the Willamette meridian. Said district, as above bounded, shall be known and designated as The Dalles district; and the office of said district shall be located at the city of The Dalles, or such place as the President shall direct, in the State of Oregon; and the President of the United States shall have power to change the location of said land-office, in said State, from time to time, as the public interests may seem to require. [18 Stat. L. 294.]

SEC. 2. [*Register and receiver.*] That the President is hereby authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof, a register and a receiver for the district hereby created, who shall each reside in the place where said land-office is located, and shall have the same powers, responsibilities, and emoluments, and be subject to the same acts and penalties, which are, or may be, prescribed by law in relation to other land-officers in said State. [18 Stat. L. 295.]

SEC. 3. [*Lands subject to disposal under public land laws.*] That the public lands in said district shall be subject to sale and disposal upon the same terms and conditions as other public lands of the United States: *Provided*, That all sales and locations made at the office of the old district of lands situated within the limits of the new district, which shall be valid and right in other respects, up to the day on which the new office shall go into operation, be, and the same are hereby, confirmed. [18 Stat. L. 295.]

An act to establish an additional land-district in the State of Oregon.

[*Act of May 21, 1888, ch. 297, 25 Stat. L. 152.*]

[SEC. 1.] [*Oregon — Harney land district.*] That so much of the districts of lands subject to sale under existing laws at Lakeview, La Grande, and The Dalles land districts, in the State of Oregon, as are contained in the following boundaries, shall constitute a new land district, to be called the Harney land-district, bounded as follows: Commencing at Snake River, in the State of Oregon, on township line between townships twelve and thirteen south of second standard parallel; thence west to northwest corner of township thirteen south, of range twenty-four east, of Willamette meridian; thence due south to the southwest corner of township twenty-nine south, of range twenty-four east, of Willamette meridian; thence due east to the boundary-line of the State of Oregon; thence north on said boundary line to the place of beginning. [25 Stat. L. 152.]

SEC. 2. [*Land office.*] That the location of the office of said district shall be designated by the President of the United States, and may be changed from time to time by him as the public convenience may seem to require. [25 Stat. L. 152.]

SEC. 3. [*Register and receiver.*] That there shall be appointed by the President, by and with the advice and consent of the Senate, a register and a receiver for said land-district, who shall respectively be required to reside at the site of the office, and be subject to the same laws and entitled to the same compensation as is or may be prescribed by law in relation to other land-offices in said State. [25 Stat. L. 153.]

An act to establish a land-office in the southern part of Utah Territory, to be known as the Beaver district, and for other purposes.

[Act of April 25, 1876, ch. 78, 19 Stat. L. 36.]

[SEC. 1.] [*Utah — Beaver land district.*] That so much of the public lands of the United States in the Territory of Utah, begin[n]ing at the southwestern boundary of said Territory, thence running north on the line between said Territory and the State of Nevada to the Fourth Standard parallel of latitude, thence easterly along said line to the eastern boundary of of [*sic*] said Territory, thence southerly to the southern boundary of said Territory, thence westerly to the place of begin[n]ing, be formed into a land district, to be called the Beaver land district, the land-office for which shall be located at such point as the President may direct, and may be removed from time to time to other points within said district whenever, in his opinion, it may be expedient. [19 Stat. L. 36.]

SEC. 2. [*Register and receiver.*] That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a register and a receiver for said district, who shall respectively be required to reside at the site of said office; and they shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to the land-office now established at Salt Lake City. [19 Stat. L. 36.]

An act to create an additional land office at Colfax, Whitman County, Washington Territory.

[Act of Aug. 15, 1876, ch. 307, 19 Stat. L. 207.]

[SEC. 1.] [*Washington — Whitman land district — office at Colfax.*] That the President of the United States be, and he is hereby, authorized to establish an additional land-district in the Territory of Washington, which district shall be bounded as follows, namely: Commencing at a point where the Columbia guide-meridian intersects the third standard parallel in said Territory; thence east along the line of said standard parallel to where the same intersects Snake River; thence along said Snake River to where the same intersects the boundary-line between Washington Territory and Idaho Territory; thence north on said boundary-line to where the same intersects the boundary-line between Washington Territory and British Columbia; thence west along said line to where the same intersects the aforementioned Columbia guide-meridian; thence south along the line of said meridian to the place of beginning. Said district, as above bounded, shall be known and designated as the Whitman district, and the office of said district shall be located at the town of Colfax, or at such place as the President may direct, in the Territory of Washington; and the President of the United States shall have power to change the location of said land-office, in said Territory, from time to time, as the public interests may seem to require. [19 Stat. L. 207.]

SEC. 2. [*Register and receiver.*] That the President is hereby authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof, a register and a receiver for the district hereby created, who shall each reside in the place where said land-office is located, and shall have the same powers, responsibilities, and emoluments, and be subject to the same acts and penalties, which are or may be prescribed by law in relation to other land officers in said Territory. [19 Stat. L. 207.]

SEC. 3. [*Sale of public lands.*] That the public lands in said district shall be subject to sale and disposal upon the same terms and conditions as other public lands of the United States: *Provided*, That all sales and locations made at the office of the old district of land situated within the limits of the new district, which shall be valid and right in other respects up to the day on which the new office shall go into operation, be, and the same are hereby confirmed. [19 Stat. L. 207.]

An act creating Yakima land-district in Washington Territory.

[Act of June 16, 1890, ch. 242, 21 Stat. L. 283.]

[SEC. 1.] [*Washington — Yakima land district.*] That all that portion of Washington Territory bounded by a line commencing at a point of the intersection of the line between townships six and seven north, and between ranges twenty-seven and twenty-eight east of the Willamette meridian; and running westerly along said line between townships six and seven north to the summit of the Cascade Mountains; thence northerly along said summit to the boundary line between the United States and British Columbia; thence east along said line to the Columbia guide meridian; thence south on said meridian to the line between townships sixteen and seventeen north; thence west along said line to the line between ranges twenty-seven and twenty-eight east; thence south along said line to the place of beginning shall constitute a separate land district, to be called the Yakima land district, the office of which shall be located at Yakima City therein. [21 Stat. L. 283.]

SEC. 2. [*Register and receiver.*] That the President shall appoint, by and with the advice and consent of the Senate, or during the recess thereof, a register and a receiver of public moneys for said district; and said officers shall reside in the place where said land office is located, and shall have the same powers and responsibilities, and shall receive the same fees and emoluments, as the like officers now receive in the other land-offices in said Territory. [21 Stat. L. 284.]

SEC. 3. [*Transfer of business to Yakima land office.*] That all persons in said district who, prior to the opening of said Yakima land-office, shall have filed their declaratory statements or applications for pre-emption, homestead, or other land rights, in any other land-office in said Territory of Washington, shall hereafter make proofs and entries at said Yakima land-office; and all unfinished business in any other land-office relating exclusively to lands in said Yakima land district shall be transferred to said Yakima land-office when notified by the officers of the opening thereof. [21 Stat. L. 284.]

An act to establish two additional land districts in the State of Washington.

[Act of May 16, 1890, ch. 215, 26 Stat. L. 113.]

[SEC. 1.] [*Washington — Chehalis land district with office at Olympia.*] That all that portion of the State of Washington bounded and described as follows: Commencing at a point on the western coast of the State of Washington, where the line between townships fourteen and fifteen north of the baseline intersects said coast; thence east along said line between townships fourteen and fifteen to the summit of the Cascade range of mountains; thence north along the summit of said range to a point where the fifth standard

parallel, if projected, would intersect said range; thence west along said fifth standard parallel to the Willamette principal meridian; thence north along said meridian to the northeast corner of township twenty-four north of range one west; thence west along the line between townships twenty-four and twenty-five when extended to the Pacific Ocean; thence south along the western coast of the State to the place of beginning, be, and the same is hereby, constituted a new land district, to be called the Chehalis land district of the State of Washington, and the land office for said district shall be located at the city of Olympia. [26 Stat. L. 113.]

SEC. 2. [*Columbia land district with office at Waterville.*] That all that portion of the State of Washington beginning at a point on the northern boundary of the State where the Columbia guide meridian, when projected, will intersect the said northern boundary of the State; thence west along said northern boundary to a point where the same intersects the summit of the Cascade range of mountains; thence south along the summit of said Cascade range to a point where the fifth standard parallel north when projected will intersect said range; thence east along said fifth standard parallel to the intersection thereof with the Columbia guide meridian, between ranges thirty and thirty-one east; thence north following said guide meridian to the place of beginning be, and the same is hereby, constituted a new land district, to be called the Columbia land district in the State of Washington, and the land office for said district shall be located at the town of Waterville. [26 Stat. L. 114.]

SEC. 3. [*Registers and receivers.*] That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and receiver for each of said land districts hereby created, who shall reside at the places where their respective land offices are located, and who shall have the same authority and shall perform the same and similar duties, and receive the same fees, emoluments, and compensation as registers and receivers discharging like duties in other land offices in the State of Washington, and said land district shall be subject as other land districts are under the laws to be changed or consolidated with any other land district or districts, and the said land offices may be changed to any other location by order of the President. [26 Stat. L. 114.]

An act to establish a new land-district in the Territory of Wyoming.

[Act of Aug. 9, 1876, ch. 256, 19 Stat. L. 126.]

[SEC. 1.] [*Wyoming — Evanston land district.*] That all the public lands in the Territory of Wyoming lying west of the thirty-first meridian of longitude west from Washington shall constitute a new land-district, to be called the Evanston district. [19 Stat. L. 126.]

SEC. 2. [*Register and receiver.*] That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof, and until the next session after such appointment, a register and a receiver for said district, who shall be required to reside in the town of Evanston, Wyoming Territory, until such time as the President may, in his discretion, remove the site of said land-office from the said town, be subject to the same laws and be entitled to the same compensation as is or may

hereafter be provided by law in relation to the existing land-offices and officers in said Territory. [19 Stat. L. 126.]

[*Wyoming — Buffalo land district — register and receiver with office at Buffalo.*] * * * That all the public lands in the Territory of Wyoming lying in the counties of Johnson and Crook, in said Territory, shall constitute a new land district, to be called the Buffalo district.

That the President be, and is hereby, authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof and until the next session after such appointment, a register and a receiver for said district, who shall be required to reside in the town of Buffalo, Wyoming Territory, until such time as the President may, in his discretion, remove the site of said land-office from said town; and they shall be subject to the same laws and be entitled to the same compensation as is or may hereafter be provided by law in relation to the existing land-offices and officers in said Territory. * * * [24 Stat. L. 526.]

This is from the Sundry Civil Appropriation Act of March 3, 1887, ch. 362.

An act to establish three new land districts in the Territory of Wyoming.

[Act of April 23, 1890, ch. 153, 26 Stat. L. 61.]

[SEC. 1.] [*Wyoming — new land districts — first district.*] That all the public lands in the Territory of Wyoming bounded and described as follows, beginning at a point on the eastern boundary of the said Territory where the tenth standard parallel north intersects the same; thence running west along said tenth standard parallel north to the southeast corner of township forty-one north, range seventy-five west; thence north on the line between ranges seventy-four and seventy-five west to the northern boundary-line of the said Territory; thence east along said northern boundary-line to the northeast corner of the said Territory; thence south along the said eastern boundary-line of the said Territory to the place of beginning, shall constitute a new land district, and the land office of the said district shall be located at such place in said district as the President may direct. [26 Stat. L. 61.]

SEC. 2. [*Second district.*] That all the public lands of the Territory of Wyoming bounded and described as follows, beginning at a point on the northern boundary of the said Territory where the twelfth guide meridian will, when extended, intersect with the same; thence south along said guide meridian to the eleventh standard parallel north; thence east along said parallel to the eleventh auxiliary meridian; thence south along said meridian, when extended, to the seventh standard parallel north; thence west along said seventh standard parallel to the southwest corner of township twenty-nine north, range one hundred and four west, of the sixth principal meridian; thence north along said line between ranges one hundred and four and one hundred and five west to the ninth standard parallel north, when extended; thence along said parallel, when extended, to the western boundary of the said Territory; thence north along said western boundary to the northern boundary of the said Territory; thence east along said northern boundary to the place of beginning, shall constitute a new land district, and the land office of the said district shall be located at such place in the said district as the President may direct. [26 Stat. L. 61.]

SEC. 3. [*Third district.*] That all the public lands in the Territory of Wyoming bounded and described as follows, beginning at a point on the eastern boundary of the said Territory where the tenth standard parallel north intersects the same; thence running west along the said tenth standard parallel north to the eleventh auxiliary meridian; thence south along said meridian when extended, to the seventh standard parallel north; thence east along the said seventh standard parallel to the southeast corner of township twenty-nine north, range seventy-one west; thence north on the line between ranges seventy and seventy-one west to the southeast corner of township thirty-one north, range seventy-one west; thence east along the line between townships thirty and thirty-one north to the eastern boundary-line of the said Territory to the place of beginning, shall constitute a new land district, and the land office of the said district shall be located at such place in said district as the President may direct. [26 Stat. L. 61.]

SEC. 4. [*Registers and receivers.*] That the President be, and is hereby, authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof, and until the next session after such appointment, a register and receiver for each of said districts, who shall be required to reside in the town in their respective districts as may be designated for the location of the land office, and they shall be subject to the same laws and be entitled to the same compensation as is or may be provided by law in relation to the existing land offices and officers in said Territory. [26 Stat. L. 61.]

[V. PRE-EMPTIONS.]

Secs. 2257-2274. [*Repealed.*]

Sections 2257-2288 constitute chapter 4 (entitled as above) of title 32 of the Revised Statutes. This chapter, with the exception of sections 2275, 2276, 2286, was expressly repealed by Act of March 3, 1891, ch. 561, sec. 4. Section 2288 was, however, expressly amended by such Act, and is given *infra*, div. XIX.

Sections 2257-2274 were as follows:

"SEC. 2257. [*Lands subject to pre-emption.*] All lands belonging to the United States, to which the Indian title has been or may hereafter be extinguished, shall be subject to the right of pre-emption, under the conditions, restrictions, and stipulations provided by law." Act of June 2, 1862, ch. 94, 12 Stat. L. 413.

This section has been construed or cited in the following cases:

United States. — *Atherton v. Fowler*, (1877) 96 U. S. 513; *Buttz v. Northern Pac. R. Co.*, (1886) 119 U. S. 55; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 632; *U. S. v. Garretson*, (1890) 42 Fed. Rep. 22; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 156; *Northern Pac. R. Co. v. McCormick*, (C. C. A. 1899) 94 Fed. Rep. 932; *Healey v. U. S.*, (1894) 29 Ct. Cl. 115, *re-*

versed in (1895) 160 U. S. 136; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78; *Osborn v. U. S.*, (1898) 33 Ct. Cl. 304.

California. — *McBrown v. Morris*, (1881) 59 Cal. 64; *Irvine v. Tarbat*, (1894) 105 Cal. 237.

Colorado. — *Denver, etc., R. Co. v. Hanoum*, (1893) 19 Colo. 162.

Iowa. — *Bullard v. Des Moines, etc., R. Co.*, (1883) 62 Iowa 382.

"SEC. 2258. [*Lands not subject to pre-emption.*] The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to wit:

"First. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose.

"Second. Lands included within the limits of any incorporated town, or selected as the site of a city or town.

"Third. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.

"Fourth. Lands on which are situated any known salines or mines." Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 455.

This section has been construed or cited in the following cases:

United States. — *Stark v. Starrs*, (1867) 6

Wall. (U. S.) 402; *Sherman v. Buick*, (1876) 93 U. S. 209; *Deffebach v. Hawke*, (1885) 115 U. S. 392; *Mullan v. U. S.*, (1886) 118 U. S. 271, *affirming* (1882) 10 Fed. Rep. 785; *Colorado Coal, etc., Co. v. U. S.*, (1887) 123 U. S. 307; *Wood v. Beach*, (1895) 156 U. S. 548; *Whitney v. Taylor*, (1895) 158 U. S. 85; *U. S. v. Healey*, (1895) 160 U. S. 136, *reversing* (1894) 29 Ct. Cl. 115; *Burfenning v. Chicago, etc., R. Co.*, (1896) 163 U. S. 321; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *U. S. v. Payne*, (1881) 8 Fed. Rep. 883; *Cowell v. Lammers*, (1884) 21 Fed. Rep. 200; *U. S. v. Keed*, (1886) 28 Fed. Rep. 482; *U. S. v. Williams*, (1886) 30 Fed. Rep. 309, *affirmed in* (1891) 138 U. S. 514; *Felix v. Patrick*, (1888) 36 Fed. Rep. 457, *affirmed in* (1892) 145 U. S. 317; *U. S. v. Garretson*, (1890) 42 Fed. Rep. 22; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604; *Northern Pac. R. Co. v. Amacker*, (1892) 53 Fed. Rep. 48; *Ex p. Davidson*, (1893) 57 Fed. Rep. 883; *Northern Pac. R. Co. v. Hussey*, (C. C. A. 1894) 61 Fed. Rep. 232; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Southern Pac. R. Co. v. Groeck*, (C. C. A. 1898) 87 Fed. Rep. 970; *Olive Land, etc., Co. v. Olmstead*, (1900) 103 Fed. Rep. 568; *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, (1900) 104 Fed. Rep. 21, *affirmed in* (C. C. A. 1901) 112 Fed. Rep. 4; *King v. McAndrews*, (C. C. A. 1901) 111 Fed. Rep. 860, *affirming* (1900) 104 Fed. Rep. 430; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78; *Osborn v. U. S.*, (1898) 33 Ct. Cl. 304; (1846) 4 Op. Atty-Gen. 493; (1854) 6 Op. Atty-Gen. 658.

Arizona.—*Kansas City Min., etc., Co. v. Clay*, (Ariz. 1892) 29 Pac. Rep. 11; *U. S. v. Blackburn*, (Ariz. 1897) 48 Pac. Rep. 904.

California.—*Central Pac. R. Co. v. Yol-land*, (1875) 49 Cal. 438; *McBrown v. Morris*, (1881) 59 Cal. 64; *Heath v. Wallace*, (1886) 71 Cal. 50; *Leviston v. Ryan*, (1888) 75 Cal. 293; *Irvine v. Tarbat*, (1894) 105 Cal. 242.

Colorado.—*Denver, etc., R. Co. v. Hanoum*, (1893) 19 Colo. 162.

Iowa.—*Bullard v. Des Moines, etc., R. Co.*, (1883) 62 Iowa 382.

Minnesota.—*Burfenning v. Chicago, etc., R. Co.*, (1891) 46 Minn. 20.

Wisconsin.—*Houlton v. Chicago, etc., R. Co.*, (1893) 86 Wis. 59.

"SEC. 2259. [Persons entitled to pre-emption.] Every person, being the head of a family, or widow, or single person, over the age of twenty-one years, and a citizen of the United States, or having filed a declaration of intention to become such, as required by the naturalization laws, who has made, or hereafter makes, a settlement in person on the public lands subject to pre-emption, and who inhabits and improves the same, and who has erected or shall erect a dwelling thereon, is authorized to enter with the register of the land-office for the district in which such land lies, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter-section of land, to include the

residence of such claimant, upon paying to the United States the minimum price of such land." Act of Sept. 4, 1841, ch. 16, § 5 Stat. L. 455.

This section has been construed or cited in the following cases:

United States.—*Clements v. Warner*, (1860) 24 How. (U. S.) 394; *Frisbie v. Whitney*, (1869) 9 Wall. (U. S.) 187; *Minor v. Happersett*, (1874) 21 Wall. (U. S.) 162; *Sherman v. Buick*, (1876) 93 U. S. 209; *Atherton v. Fowler*, (1877) 96 U. S. 513; *Lansdale v. Daniels*, (1879) 100 U. S. 113; *Potter v. U. S.*, (1882) 107 U. S. 126; *Sanford v. Sanford*, (1891) 139 U. S. 642; *Orchard v. Alexander*, (1895) 157 U. S. 372; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *U. S. v. Stanley*, (1855) 6 McLean (U. S.) 409, 27 Fed. Cas. No. 16,376; *Aiken v. Ferry*, (1879) 6 Sawy. (U. S.) 79, 1 Fed. Cas. No. 112; *U. S. v. Payne*, (1881) 8 Fed. Rep. 883; *U. S. v. Williams*, (1886) 30 Fed. Rep. 309; *U. S. v. Freyberg*, (1886) 32 Fed. Rep. 195; *U. S. v. Howard*, (1889) 37 Fed. Rep. 666; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed in* (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Bedgood*, (1891) 49 Fed. Rep. 54; *Northern Pac. R. Co. v. Hinchman*, (1892) 53 Fed. Rep. 523; *Minneapolis v. Reum*, (C. C. A. 1893) 56 Fed. Rep. 576; *U. S. v. Union Pac. R. Co.*, (1894) 61 Fed. Rep. 143, *affirmed in* (C. C. A. 1895) 67 Fed. Rep. 974; *Stimson Land Co. v. Rawson*, (1894) 62 Fed. Rep. 426; *Bogan v. Edinburgh American Land Mortg. Co.*, (C. C. A. 1894) 63 Fed. Rep. 192; *Hebert v. Brown*, (1895) 65 Fed. Rep. 2; *U. S. v. Winona, etc., R. Co.*, (C. C. A. 1895) 67 Fed. Rep. 969, *affirmed in* (1897) 165 U. S. 483; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *U. S. v. Central Pac. R. Co.*, (C. C. A. 1899) 94 Fed. Rep. 906; *Northern Pac. R. Co. v. McCormick*, (C. C. A. 1899) 94 Fed. Rep. 932; *Grubbs v. U. S.*, (C. C. A. 1900) 105 Fed. Rep. 314; *U. S. v. Blendauer*, (1903) 122 Fed. Rep. 703; *Healey v. U. S.*, (1894) 29 Ct. Cl. 115, *reversed in* (1895) 160 U. S. 136; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78; *Ingram v. U. S.*, (1897) 32 Ct. Cl. 147; (1843) 4 Op. Atty-Gen. 147; (1855) 7 Op. Atty-Gen. 351; (1856) 7 Op. Atty-Gen. 746; (1862) 10 Op. Atty-Gen. 390.

California.—*Cumens v. Cyphers*, (1880) 56 Cal. 383; *Thompson v. Spray*, (1887) 72 Cal. 528; *Merrill v. Clark*, (1894) 103 Cal. 367.

Minnesota.—*Peterson v. First Div. St. Paul, etc., R. Co.*, (1880) 27 Minn. 218.

South Dakota.—*Scott v. Toomey*, (1896) 8 S. Dak. 639.

Washington.—*Pierce v. Frace*, (1891) 2 Wash. 81.

"SEC. 2260. [Persons not entitled to pre-emption.] The following classes of persons, unless otherwise specially provided for by law, shall not acquire any right of pre-emption under the provisions of the preceding section, to wit:

"First. No person who is the proprietor of

three hundred and twenty acres of land in any State or Territory.

"Second. No person who quits or abandons his residence on his own land to reside on the public lands in the same State or Territory." Act of Sept. 4, 1841, ch. 16, § 5 Stat. L. 455.

This section has been construed or cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *Aiken v. Ferry*, (1879) 6 Sawy. (U. S.) 79, 1 Fed. Cas. No. 112; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Bedgood*, (1891) 49 Fed. Rep. 54; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Healey v. U. S.*, (1894) 29 Ct. Cl. 115, *reversed* in (1895) 160 U. S. 136; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78.

"SEC. 2261. [*Limitation of pre-emption right.*] No person shall be entitled to more than one pre-emptive right by virtue of the provisions of section twenty-two hundred and fifty-nine; nor where a party has filed his declaration of intention to claim the benefits of such provisions, for one tract of land, shall he file, at any future time, a second declaration for another tract." Act of Sept. 4, 1841, ch. 16, § 5 Stat. L. 455; Act of March 3, 1843, ch. 86, § 5 Stat. L. 620.

This section has been construed or cited in *Johnson v. Towsley*, (1871) 13 Wall. (U. S.) 72; *Baldwin v. Stark*, (1882) 107 U. S. 463; *Sanford v. Sanford*, (1891) 139 U. S. 642; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Bedgood*, (1891) 49 Fed. Rep. 54; *Durango Land, etc., Co. v. Evans*, (C. C. A. 1897) 80 Fed. Rep. 425; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Healey v. U. S.*, (1894) 29 Ct. Cl. 115, *reversed* in (1895) 160 U. S. 136; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78; *Cumens v. Cyphers*, (1880) 56 Cal. 383.

"SEC. 2262. [*Oath of pre-emptionist, where filed, penalty.*] Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the receiver or register of the land-district in which the land is situated that he has never had the benefit of any right of pre-emption under section twenty-two hundred and fifty-nine; that he is not the owner of three hundred and twenty acres of land in any State or Territory; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself; and if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for

such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona-fide purchasers, for a valuable consideration, shall be null and void, except as provided in section twenty-two hundred and eighty-eight. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land-office of such district, and to transmit a duplicate copy to the General Land-Office, either of which shall be good and sufficient evidence that such oath was administered according to law." Act of Sept. 4, 1841, ch. 16, § 5 Stat. L. 456.

This section was amended by Act of June 9, 1880, ch. 164. See *infra*, p. 298.

This section has been construed or cited in the following cases:

United States.—*Potter v. U. S.*, (1882) 107 U. S. 126; *U. S. v. Minor*, (1885) 114 U. S. 233; *Orchard v. Alexander*, (1895) 157 U. S. 372; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *Hyde v. Bishop Iron Co.*, (1900) 177 U. S. 281; *Hawley v. Diller*, (1900) 178 U. S. 476; *U. S. v. White*, (1883) 17 Fed. Rep. 561, 9 Sawy. (U. S.) 125; *Smith v. Ewing*, (1885) 23 Fed. Rep. 741; *U. S. v. Howard*, (1889) 37 Fed. Rep. 666; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Bedgood*, (1891) 49 Fed. Rep. 54; *U. S. v. Stearnson*, (C. C. A. 1892) 50 Fed. Rep. 504; *Northern Pac. R. Co. v. Hinchman*, (1892) 53 Fed. Rep. 523; *American Mortg. Co. v. Hopper*, (1893) 56 Fed. Rep. 67, *affirmed* in (C. C. A. 1894) 64 Fed. Rep. 553; *Swigett v. U. S.*, (1896) 78 Fed. Rep. 456; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78; (1847) 4 Op. Atty-Gen. 558.

Arkansas.—*Shorman v. Eakin*, (1886) 47 Ark. 351; *Marshall v. Cowles*, (1886) 48 Ark. 362; *St. Louis, etc., R. Co. v. Tapp*, (1897) 64 Ark. 357.

California.—*Snow v. Kimmer*, (1878) 52 Cal. 624; *Harris v. Harris*, (1886) 71 Cal. 314; *Sparrow v. Rhoades*, (1888) 76 Cal. 208; *Morgan v. Lones*, (1888) 78 Cal. 58; *Moffatt v. Bulson*, (1892) 96 Cal. 106; *Stewart v. Powers*, (1893) 98 Cal. 514; *Merrill v. Clark*, (1894) 103 Cal. 367.

Colorado.—*Everett v. Todd*, (1894) 19 Colo. 322; *Wilcox v. John*, (1895) 21 Colo. 367.

Florida.—*Lee v. Patten*, (1894) 34 Fla. 166.

Illinois.—*Close v. Stuyvesant*, (1890) 132 Ill. 607.

Minnesota.—*Bishop Iron Co. v. Hyde*, (1896) 66 Minn. 24; *Gross v. Hafemann*, (1903) 91 Minn. 1.

Montana.—*Bass v. Buker*, (1887) 6 Mont. 442; *Norris v. Heald*, (1892) 12 Mont. 282.

Nebraska.—*Robinson v. Jones*, (1890) 31 Neb. 20.

Utah.—*Steele v. Boley*, (1889) 6 Utah 308.

Washington.—*Carson v. Railsback*, (1887) 3 Wash. Ter. 168.

"SEC. 2263. [*Proof of settlement, assignment of pre-emption rights.*] Prior to any entries being made under and by virtue of the provisions of section twenty-two hundred and fifty-nine, proof of the settlement and improvement thereby required shall be made to the satisfaction of the register and receiver of the land-district in which such lands lie, agreeably to such rules as may be prescribed by the Secretary of the Interior; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void." Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 456.

This section has been construed or cited in the following cases:

United States.—*Irvine v. Irvine*, (1869) 9 Wall. (U. S.) 617; *Myers v. Croft*, (1871) 13 Wall. (U. S.) 291; *Potter v. U. S.*, (1882) 107 U. S. 126; *Orchard v. Alexander*, (1895) 157 U. S. 372; *Gonzales v. French*, (1896) 164 U. S. 338; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *Kellom v. Easley*, 1 Dill. (U. S.) 281, 14 Fed. Cas. No. 7,668; *Smith v. Ewing*, (1885) 23 Fed. Rep. 741; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Bedgood*, (1891) 49 Fed. Rep. 54; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; (1856) 7 Op. Atty.-Gen. 647.

Arizona.—*Gonzales v. French*, (Ariz. 1893) 33 Pac. Rep. 501.

California.—*Chapman v. Quinn*, (1880) 56 Cal. 286; *Turner v. Donnelly*, (1886) 70 Cal. 597; *Sparow v. Rhoades*, (1888) 76 Cal. 208; *Stewart v. Powers*, (1893) 98 Cal. 516; *Merrill v. Clark*, (1894) 103 Cal. 367.

Colorado.—*McMillen v. Gerstle*, (1893) 19 Colo. 98; *Everett v. Todd*, (1894) 19 Colo. 322; *Cooper v. Hunter*, (1896) 8 Colo. App. 101.

Idaho.—*Jones v. Meyers*, (1891) 3 Idaho 52.

Illinois.—*Close v. Stuyvesant*, (1890) 132 Ill. 607.

Iowa.—*Purcell v. Lang*, (1899) 108 Iowa 198.

Minnesota.—*Olson v. Orton*, (1881) 28 Minn. 36.

Washington.—*Burch v. McDaniel*, (1881) 2 Wash. Ter. 58; *Pierce v. Frace*, (1891) 2 Wash. 81; *Lawrence v. Potter*, (1900) 22 Wash. 32.

"SEC. 2264. [*Statement to be filed by settler with intent to purchase, on lands subject to private entry.*] When any person settles or improves a tract of land subject at the time of settlement to private entry, and intends to purchase the same under the preceding provisions of this chapter, he shall, within thirty days after the date of such settlement, file with the register of the proper district a written statement, describing the land settled upon and declaring his intention to claim the same under the pre-emption laws; and he shall, moreover, within twelve months after the date of such settlement, make the proof, affidavit, and payment heretofore required. If he fails to file such

written statement, or to make such affidavit, proof, and payment within the several periods named above, the tract of land so settled and improved shall be subject to the entry of any other purchaser." Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 457.

This section has been construed or cited in *Johnson v. Towsley*, (1871) 13 Wall. (U. S.) 72; *Atherton v. Fowler*, (1877) 96 U. S. 513; *Morrison v. Stalnaker*, (1881) 104 U. S. 213; *Whitney v. Taylor*, (1895) 158 U. S. 85; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *Tarpey v. Madsen*, (1900) 178 U. S. 215; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirming* (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Union Pac. R. Co.*, (1894) 61 Fed. Rep. 143, *affirmed* in (C. C. A. 1895) 67 Fed. Rep. 974; *Chicago, etc., R. Co. v. U. S.*, (C. C. A. 1901) 108 Fed. Rep. 311; (1846) 4 Op. Atty.-Gen. 493; (1852) 5 Op. Atty.-Gen. 609; *Hollinshead v. Simms*, (1875) 51 Cal. 158; *U. S. v. Spaulding*, (1882) 3 Dak. 85.

"SEC. 2265. [*Claim filed by settler on land not proclaimed for sale.*] Every claimant under the pre-emption law for land not yet proclaimed for sale is required to make known his claim in writing to the register of the proper land-office within three months from the time of the settlement, giving the designation of the tract and the time of settlement; otherwise his claim shall be forfeited and the tract awarded to the next settler, in the order of time, on the same tract of land, who has given such notice and otherwise complied with the conditions of the law." Act of March 3, 1843 ch. 86, 5 Stat. L. 620.

This section has been construed or cited in *Johnson v. Towsley*, (1871) 13 Wall. (U. S.) 72; *Morrison v. Stalnaker*, (1881) 104 U. S. 213; *Gonzales v. French*, (1896) 164 U. S. 338; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 622; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Union Pac. R. Co.*, (1894) 61 Fed. Rep. 143, *affirmed* in (C. C. A. 1895) 67 Fed. Rep. 974; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *U. S. v. Spaulding*, (1882) 3 Dak. 85.

"SEC. 2266. [*Declaratory statement of settlers on unsurveyed lands, when filed.*] In regard to settlements which are authorized upon unsurveyed lands, the pre-emption claimant shall be in all cases required to file his declaratory statement within three months from the date of the receipt at the district land-office of the approved plat of the township embracing such pre-emption settlement." Act of May 30, 1862, ch. 86, 12 Stat. L. 410.

This section has been construed or cited in *Lansdale v. Daniels*, (1879) 100 U. S. 113; *Morrison v. Stalnaker*, (1881) 104 U. S. 213; *Deffeback v. Hawke*, (1885) 115 U. S. 392; *Gonzales v. French*, (1896) 164 U. S. 338; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 632; *Cowell v. Lammers*, (1884) 21 Fed.

Rep. 200; Northern Pac. R. Co. v. Sanders, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. Union Pac. R. Co., (1894) 61 Fed. Rep. 143, *affirmed* in (C. C. A. 1895) 67 Fed. Rep. 974; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152; Northern Pac. R. Co. v. McCormick, (C. C. A. 1899) 94 Fed. Rep. 939; Osborne v. Altschul, (1900) 101 Fed. Rep. 739; Hollinshead v. Simms, (1875) 51 Cal. 158; Schieffery v. Tapia, (1885) 68 Cal. 184; U. S. v. Spaulding, (1882) 3 Dak. 85.

"SEC. 2267. [*Pre-emption claimants; time of making proof and payment.*] All claimants of pre-emption rights, under the two preceding sections, shall, when no shorter time is prescribed by law, make the proper proof and payment for the lands claimed within thirty months after the date prescribed therein, respectively, for filing their declaratory notices, has expired." Act of July 14, 1870, ch. 272, 16 Stat. L. 279; Act of March 3, 1871, Res. 52, 16 Stat. L. 604.

This section has been construed or cited in Morrison v. Stalnaker, (1881) 104 U. S. 213; Whitney v. Taylor, (1895) 158 U. S. 95; Gonzales v. French, (1896) 164 U. S. 338; Smith v. U. S., (1898) 170 U. S. 372; Northern Pac. R. Co. v. De Lacey, (1899) 174 U. S. 622; Oregon, etc., R. Co. v. U. S., (1903) 190 U. S. 186; Smith v. Ewing, (1885) 23 Fed. Rep. 741; Northern Pac. R. Co. v. Sanders, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152; Meads v. U. S., (C. C. A. 1897) 81 Fed. Rep. 684; U. S. v. Spaulding, (1882) 3 Dak. 85; Tarpey v. Madsen, (1898) 17 Utah 352.

"SEC. 2268. [*Extension of time in certain cases to persons in military and naval service.*] Where a pre-emptor has taken the initiatory steps required by law in regard to actual settlement, and is called away from such settlement by being engaged in the military or naval service of the United States, and by reason of such absence is unable to appear at the district land-office to make before the register or receiver the affidavit, proof, and payment, respectively, required by the preceding provisions of this chapter, the time for filing such affidavit and making final proof and entry or location shall be extended six months after the expiration of his term of service, upon satisfactory proof by affidavit, or the testimony of witnesses, that such pre-emptor is so in the service, being filed with the register of the land-office for the district in which his settlement is made." Act of March 21, 1864, ch. 38, 13 Stat. L. 35.

This section has been construed or cited in Smith v. U. S., (1898) 170 U. S. 372; Northern Pac. R. Co. v. Sanders, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. Union Pac. R. Co., (1894) 61 Fed. Rep. 143, *affirmed* in (C. C. A. 1895) 67 Fed. Rep. 974; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152.

"SEC. 2269. [*Death before consummating claim; who to complete, etc.*] Where a party

entitled to claim the benefits of the pre-emption laws dies before consummating his claim, by filing in due time all the papers essential to the establishment of the same, it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same; but the entry in such cases shall be made in favor of the heirs of the deceased pre-emptor, and a patent thereon shall cause the title to inure to such heirs, as if their names had been specially mentioned." Act of March 3, 1843, ch. 86, 5 Stat. L. 620.

This section has been construed or cited in the following cases:

United States.—Buxton v. Traver, (1889) 130 U. S. 232; Hutchinson Invest. Co. v. Caldwell, (1894) 152 U. S. 65; Smith v. U. S., (1898) 170 U. S. 372; Northern Pac. R. Co. v. Sanders, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152. *Alabama.*—Tennessee Coal, etc., Co. v. Tutwiler, (1895) 108 Ala. 483.

California.—Buxton v. Traver, (1885) 67 Cal. 171; Green v. Green, (1894) 103 Cal. 108; Wittenbrock v. Wheadon, (1900) 128 Cal. 150.

Dakota.—U. S. v. Spaulding, (1882) 3 Dak. 85.

Iowa.—Wood v. Murray, (1892) 85 Iowa 505.

Kansas.—Chapman v. Price, (1884) 32 Kan. 446.

Minnesota.—Hayes v. Carroll, (1898) 74 Minn. 134.

Washington.—Burch v. McDaniel, (1881) 2 Wash. Ter. 58.

"SEC. 2270. [*Non-compliance with laws caused by vacancy in office of register or receiver not to affect, etc.*] Whenever the vacancy of the office either of register or receiver, or of both, renders it impossible for the claimant to comply with any requisition of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming, in respect to any matter essential to the establishment of his claim; but such requisition must be complied with within the same period after the disability is removed as would have been allowed had such disability not existed." Act of March 3, 1843, ch. 86, 5 Stat. L. 620.

This section has been construed or cited in Smith v. U. S., (1898) 170 U. S. 372; Northern Pac. R. Co. v. Sanders, (1891) 47 Fed. Rep. 604; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152; U. S. v. Spaulding, (1882) 3 Dak. 85; Tarpey v. Madsen, (1898) 17 Utah 352, *reversed* in (1900) 178 U. S. 215.

"SEC. 2271. [*No pre-emption of lands sold but not confirmed by Land-Office.*] The provisions of this chapter shall be so construed as not to confer on any one a right of pre-emption, by reason of a settlement made on a tract theretofore disposed of, when such disposal has not been confirmed by the General Land-Office, on account of any alleged defect therein." Act of Aug. 26, 1842, ch. 205, 5 Stat. L. 534.

This section has been construed or cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Union Pac. R. Co.*, (1894) 61 Fed. Rep. 143, *affirmed* in (C. C. A. 1895) 67 Fed. Rep. 974; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Witcher v. Conklin*, (1890) 84 Cal. 499.

"SEC. 2272. [Purchase by private entry after expiration of pre-emption right.] Nothing in the provisions of this chapter shall be construed to preclude any person, who may have filed a notice of intention to claim any tract of land by pre-emption, from the right allowed by law to others to purchase such tract by private entry after the expiration of the right of pre-emption." Act of March 3, 1843, ch. 86, § 5 Stat. L. 621.

This section has been construed or cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152.

"SEC. 2273. [When more than one settler, rights of, appeals to Commissioner.] When two or more persons settle on the same tract of land, the right of pre-emption shall be in him who made the first settlement, provided such person conforms to the other provision of the law; and all questions as to the right of pre-emption arising between different settlers shall be determined by the register and receiver of the district within which the land is situated; and appeals from the decision of district officers, in cases of contest for the right of pre-emption, shall be made to the Commissioner of the General Land-Office, whose decision shall be final, unless appeal therefrom be taken to the Secretary of the Interior." Act of Sept. 4, 1841, ch. 16, § 5 Stat. L. 456; Act of June 12, 1858, ch. 154, § 11 Stat. L. 326.

This section has been construed or cited in the following cases:

United States. — *Frisbie v. Whitney*, (1869) 9 Wall. (U. S.) 187; *Johnson v. Towsley*, (1871) 13 Wall. (U. S.) 82; *Warren v. Van Brunt*, (1873) 19 Wall. (U. S.) 646; *Butterworth v. U. S.*, (1884) 112 U. S. 50; *Caha v. U. S.*, (1894) 152 U. S. 211; *Orchard v. Alexander*, (1895) 157 U. S. 372; *In re Embien*, (1896) 161 U. S. 52; *Smith v. U. S.*, (1898) 170 U. S. 372; *Smith v. Ewing*, (1885) 23 Fed. Rep. 741; *Glidden v.*

Union Pac. R. Co., (1887) 30 Fed. Rep. 660; *Potter v. Tibbetts*, (1890) 43 Fed. Rep. 505; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Union Pac. R. Co.*, (1894) 61 Fed. Rep. 143, *affirmed* in (C. C. A. 1895) 67 Fed. Rep. 974; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Hot Springs Cases*, (1874) 10 Ct. Cl. 289, 350.

California. — *McHarry v. Stewart*, (Cal. 1893) 35 Pac. Rep. 141; *Wormouth v. Gardner*, (1896) 112 Cal. 506.

Colorado. — *Godding v. Decker*, (1893) 3 Colo. App. 198.

Dakota. — *Forbes v. Driscoll*, (1887) 4 Dak. 336.

Illinois. — *Close v. Stuyvesant*, (1890) 132 Ill. 607.

Oklahoma. — *Commager v. Dicks*, (1892) 1 Okla. 82.

"SEC. 2274. [Settlements of two or more persons on same subdivision before survey.] When settlements have been made upon agricultural public lands of the United States, prior to the survey thereof, and it has been or shall be ascertained, after the public surveys have been extended over such lands, that two or more settlers have improvements upon the same legal subdivision, it shall be lawful for such settlers to make joint entry of their lands at the local land-office, or for either of said settlers to enter into contract with his co-settlers to convey to them their portion of said land after a patent is issued to him, and, after making said contract, to file a declaratory statement in his own name, and prove up and pay for said land, and proof of joint occupation by himself and others, and of such contract with them made, shall be equivalent to proof of sole occupation and pre-emption by the applicant: *Provided*, That in no case shall the amount patented under this section exceed one hundred and sixty acres, nor shall this section apply to lands not subject to homestead or pre-emption entry." Act of March 3, 1873, ch. 283, § 17 Stat. L. 609.

This section has been construed or cited in *Warren v. Van Brunt*, (1873) 19 Wall. (U. S.) 646; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. Union Pac. R. Co.*, (1894) 61 Fed. Rep. 143, *affirmed* in (C. C. A. 1895) 67 Fed. Rep. 974; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Turner v. Donnelly*, (1886) 70 Cal. 597; *Miles v. Johnson*, (1899) 18 Utah 428.

Secs. 2275, 2276. [Relate to school lands. See *infra*, div. XVI.]

Secs. 2277-2285. [Repealed.]

See note under following text.

These sections were as follows:

"SEC. 2277. [Military bounty-land warrants receivable for pre-emption payments.] All warrants for military bounty-lands, which are issued under any law of the United States, shall be received in payment of pre-emption rights at the rate of one dollar and twenty-five cents per acre, for the quantity

of land therein specified; but where the land is rated at one dollar and twenty-five cents per acre, and does not exceed the area specified in the warrant, it must be taken in full satisfaction thereof." Act of March 22, 1852, ch. 19, § 10 Stat. L. 3.

This section has been construed or cited in the following cases:

United States. — *Five Per Cent. Cases*, Volume VI,

(1884) 110 U. S. 471; *Smith v. U. S.*, (1898) 170 U. S. 372; *Bronson v. Kukuk*, (1874) 3 Dill. (U. S.) 490, 4 Fed. Cas. No. 1,929; *Glidden v. Union Pac. R. Co.*, (1887) 30 Fed. Rep. 660; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; (1852) 5 Op. Atty-Gen. 617; (1856) 7 Op. Atty-Gen. 657.

Iowa. — *Johns v. Warren*, (1892) 85 Iowa 300; *Purcell v. Lang*, (1899) 108 Iowa 198.

Missouri. — *Johnson v. Fluetsch*, (1903) 176 Mo. 464.

Washington. — *McSorley v. Hill*, (1891) 2 Wash. 638.

"SEC. 2278. [*Agricultural-college scrip receivable in payment of pre-emption.*] Agricultural-college scrip, issued to any State under the act approved July second, eighteen hundred and sixty-two, or acts amendatory thereof, shall be received from actual settlers in payment of pre-emption claims in the same manner and to the same extent as authorized in case of military bounty-land warrants, by the preceding section." Act of July 1, 1870, ch. 196, 16 Stat. L. 186.

This section has been construed or cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Purcell v. Lang*, (1899) 108 Iowa 198.

"SEC. 2279. [*Pre-emption limit along railroad lines.*] No person shall have the right of pre-emption to more than one hundred and sixty acres along the line of railroads within the limits granted by any act of Congress." Act of March 3, 1853, ch. 143, 10 Stat. L. 244.

This section has been construed or cited in *Clements v. Warner*, (1860) 24 How. (U. S.) 394; *Moore v. Robbins*, (1877) 96 U. S. 530; *Lansdale v. Daniels*, (1879) 100 U. S. 113; *U. S. v. Healey*, (1895) 160 U. S. 136, *reversing* (1894) 29 Ct. Cl. 115; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *Southern Pac. R. Co. v. Groeck*, (1895) 68 Fed. Rep. 609; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78; *Ingram v. U. S.*, (1897) 32 Ct. Cl. 147; (1856) 8 Op. Atty-Gen. 16; (1871) 13 Op. Atty-Gen. 387; (1881) 17 Op. Atty-Gen. 129.

"SEC. 2280. [*Pre-emption rights on lands reserved for grants found invalid.*] Any settler on lands heretofore reserved on account of claims under French, Spanish, or other grants, which have been or may be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by the preceding provisions of this chapter, after the lands have been released from reservation, in the same manner as if no reservation had existed." Act of March 3, 1853, ch. 143, 10 Stat. L. 244.

This section has been construed or cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78.

"SEC. 2281. [*Pre-emption rights on lands reserved for railroads.*] All settlers on public lands which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them; but they shall file the proper notices of their claims and make proof and payment as in other cases." Act of March 27, 1854, ch. 25, 10 Stat. L. 269.

This section has been construed or cited in the cases of *Nix v. Allen*, (1884) 112 U. S. 129; *Smith v. U. S.*, (1898) 170 U. S. 372; *Oregon, etc., R. Co. v. U. S.*, (1903) 190 U. S. 186; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *Northern Pac. R. Co. v. McCormick*, (1898) 89 Fed. Rep. 659; (1856) 8 Op. Atty-Gen. 244; *Northern Pac. R. Co. v. Peronto*, (1882) 3 Dak. 217.

"SEC. 2282. [*Sale of land not to be delayed, etc.*] Nothing contained in this chapter shall delay the sale of any of the public lands beyond the time appointed by the proclamation of the President." Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 457.

This section has been construed or cited in *Moore v. Robbins*, (1877) 96 U. S. 530; *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604; *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152.

"SEC. 2283. [*Certain lands in Kansas, how to be sold.*] The Osage Indian trust and diminished-reserve lands in the State of Kansas, excepting the sixteenth and thirty-sixth sections in each township, shall be subject to disposal, for cash only, to actual settlers, in quantities not exceeding one hundred and sixty acres, or one quarter-section to each, in compact form, in accordance with the general principles of the pre-emption laws, under the direction of the Commissioner of the General Land-Office; but claimants shall file their declaratory statements as prescribed in other cases upon unoffered lands, and shall pay for the tracts, respectively, settled upon within one year from date of settlement where the plat of survey is on file at that date, and within one year from the filing of the township-plat in the district office where such plat is not on file at date of settlement." Act of May 9, 1872, ch. 149, 17 Stat. L. 90.

This section has been construed or cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed.

Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152; (1880) 16 Op. Atty-Gen. 430.

"SEC. 2284. [Transfer of above claims prior to, etc., subsequent right of entry.] The sale or transfer of his claim upon any portion of these lands by any settler prior to the twenty-sixth day of April, eighteen hundred and seventy-one, shall not operate to preclude the right of entry, upon the provisions of the preceding section, upon another tract settled upon subsequent to such sale or transfer; but satisfactory proof of good faith must be furnished upon such subsequent settlement." Act of May 9, 1872, ch. 149, 17 Stat. L. 90.

This section has been construed and cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed.

Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152.

"SEC. 2285. [Pre-emption restrictions not to apply to certain lands in Kansas.] The restrictions of the pre-emption laws, contained in sections twenty-two hundred and sixty and twenty-two hundred and sixty-one, shall not apply to any settler on the Osage Indian trust and diminished-reserve lands in the State of Kansas, who was actually residing on his claim on the ninth day of May, eighteen hundred and seventy-two." Act of May 9, 1872, ch. 149, 17 Stat. L. 90.

This section has been construed and cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152.

Sec. 2286. [Pre-emption by counties for seats of justice. See *infra*, div. XVI.]

Sec. 2287. [Repealed.]

This section was as follows:

"SEC. 2287. [Where claimant of entry becomes register or receiver.] Any bona-fide settler under the homestead or pre-emption laws of the United States who has filed the proper application to enter not to exceed one quarter-section of the public lands in any district land-office, and who has been subsequently appointed a register or receiver, may perfect the title to the land under the pre-emption laws by furnishing the proofs and

making the payments required by law, to the satisfaction of the Commissioner of the General Land-Office." Act of April 20, 1871, ch. 21, 17 Stat. L. 10.

See note to following text.

This section has been construed or cited in *Smith v. U. S.*, (1898) 170 U. S. 372; *Northern Pac. R. Co. v. Sanders*, (1891) 47 Fed. Rep. 604, *affirmed* in (C. C. A. 1892) 49 Fed. Rep. 129; U. S. v. La Chappelle, (1897) 81 Fed. Rep. 152.

Sec. 2288. [Transfers by settlers before patent for public purposes. See *infra*, div. XIX.]

SEC. 4. [Pre-emption laws repealed — exceptions — saving clause.] That chapter four of title thirty-two, excepting sections twenty-two hundred and seventy-five, twenty-two hundred and seventy-six, twenty-two hundred and eighty-six, of the Revised Statutes of the United States, and all other laws allowing pre-emption of the public lands of the United States, are hereby repealed, but all bona fide claims lawfully initiated before the passage of this act, under any of said provisions of law so repealed, may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests, as if this act had not been passed. [26 Stat. L. 1097.]

This is from the Act of March 3, 1891, ch. 561, "An act to repeal timber-culture laws, and for other purposes." This section repeals

R. S. secs. 2257-2274, 2277-2285, 2287, 2288. Sec. 2288 is, however, amended by sec. 3 of the same Act, and is set out, *infra*, div. XIX.

[VI. HOMESTEADS.]

Sec. 2289. [Who may enter certain unappropriated public lands.] Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of

intention to become such, as required by the naturalization laws, shall be entitled to enter one-quarter section, or a less quantity, of unappropriated public lands, to be located in a body in conformity to the legal subdivisions of the public lands; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory, shall acquire any right under the homestead law. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres. [R. S.]

This section was amended to read as above by the Act of March 3, 1891, ch. 561, sec. 5, 26 Stat. L. 1097.

The section originally was as follows:

"Sec. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter-section or a less quantity of unappropriated public lands, upon which such person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same have been surveyed. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres." Act of May 20, 1862, ch. 75, 12 Stat. L. 392.

Sections 2289-2317 constitute chapter 5 (entitled as above) of title 32 of the Revised Statutes.

Limit of amount of lands that may be entered. See Act of Aug. 30, 1890, ch. 837, *infra*, p. 313.

Indians entitled to benefit of homestead laws. See R. S. sec. 2310 *et seq.*, *infra*, p. 328.

Homestead entry defined.—"A 'homestead entry' is an entry under the provisions of the Act of Congress entitled 'an act to secure homesteads to actual settlers upon the public domain,' approved May 20, 1862 (12 Stat. 392, ch. 75), and the various amendments and additions thereto." Hartman v. Warren, (C. C. A. 1896) 76 Fed. Rep. 157.

"The policy of the Homestead Act, no less than the specific statement in the final oath, looks to a holding for a term of years by an actual settler with a view to acquiring a home for himself. In encouragement of such settlers and none others homesteads have been freely granted by the government." Adams v. Church, (1904) 193 U. S. 510. See also Moss v. Dowman, (1900) 176 U. S. 413.

A homestead claim is initiated by an entry of the land, which is effected by making an application at the proper land office, filing the affidavit and paying the amount required by sections 2238 and 2290 of the U. S. Re-

vised Statutes. Sturr v. Beck, (1890) 133 U. S. 541.

The right of homestead entry is a right secured by the Constitution and laws of the United States within the meaning of U. S. R. S. 5508, providing a penalty for conspiracy to injure, prevent, or hinder citizens from enjoying rights or privileges secured to them by the Constitution or laws of the United States. Hence a conspiracy to deprive a citizen of the right to establish his claim to certain public lands under the Homestead Act is a penal offense. The right invaded by such conspiracy is not the mere right of immunity from personal violence, but is the right to remain on the land entered in order to perform the requirements of the Act of Congress and to perfect the incipient title created by the entry. U. S. v. Waddell, (1884) 112 U. S. 76. See also U. S. v. Waddell, (1883) 16 Fed. Rep. 221.

Requisites to valid entry.—"Under the Homestead Law three things are needed to be done in order to constitute an entry on public lands: First, the applicant must make an affidavit setting forth the facts which entitle him to make such an entry; second, he must make a formal application; and third, he must make payment of the money required. When these three requisites are complied with, and the certificate of entry is executed and delivered to him, the entry is made—the land is entered. If either one of these integral parts of an entry is defective, that is, if the affidavit be insufficient in its showing, or if the application itself is informal, or if the payment is not made in actual cash, the register and receiver are justified in rejecting the application. But if, notwithstanding these defects, the application is allowed by the land officers, and a certificate of entry is delivered to the applicant, and the entry is made of record, such entry may be afterwards canceled on account of these defects by the commissioner, or on appeal by the secretary of the interior; or, as is often the practice, the entry may be suspended, a hearing ordered and the party notified to show by supplemental proof a full compliance with the requirements of the department; and on failure to do so the entry may then be canceled. But these defects, whether they be of form or substance, by no means render the entry absolutely a nullity. So long as it remains a subsisting entry of record, whose legality has been passed upon by the land authorities, and their action remains unreversed, it is such an appropriation of the tract as segregates

it from the public domain, and therefore precludes it from subsequent grants." *Hastings, etc., R. Co. v. Whitney*, (1889) 132 U. S. 357, *affirming* (1886) 34 Minn. 538.

It is just as essential to the issuance of a patent to a homestead or to the perfect right to demand a patent that the affidavit required by the U. S. Rev. Stat. sec. 2290 should at some time be made and that the sum of money prescribed by that section should be paid, as that the would-be entryman should comply with statutory requirements as to occupation, cultivation, and the like. *Black v. Jackson*, (1900) 177 U. S. 349; *Higgins v. State University*, (1891) 94 Ala. 380; *Stewart v. Altstock*, (1892) 22 Oregon 182.

Homestead is for benefit of family and not individual.—A homestead can be entered under the homestead laws of the United States only by the "head of a family," which shows that the homestead entry is for the benefit of the whole family, and not for any single individual. The homestead under such laws is virtually a gift or donation by the general government to the family; and hence, when the title to such homestead is taken in the name of any single member of the family, there should not be much consideration required to vest the title to a fair proportion thereof in another member of the family. *Newkirk v. Marshall*, (1886) 35 Kan. 77.

Vested rights conferred by preliminary entry.—A settler who has entered public lands of the United States under provisions of the Homestead Law, has, although no patent has been issued, an inchoate title to the land, which is property. This is a vested right which can only be defeated by his own failure to comply with the conditions of the law. If he complies with these conditions, he becomes invested with full ownership and the absolute right to a patent, which, when issued, relates back to the time of the entry, and under the Act of May 14, 1880, 21 U. S. Stat. L. 140, his right under the entry relates back to the date of the settlement. Hence, as against such a homestead entryman, a railroad company has no right of way under the provisions of a statute granting it right of way over public lands, unless such right was acquired by compliance with the provisions of the statute before the date of the entryman's settlement. *Red River, etc., R. Co. v. Sture*, (1884) 32 Minn. 95. See also *Nelson v. Northern Pac. R. Co.*, (1903) 188 U. S. 108. Compare *Flint, etc., R. Co. v. Gordon*, (1879) 41 Mich. 420, which, while conceding that a patent when issued relates back to the time of the entry, holds that a homestead entry vests no title but merely gives the entryman a right of possession which may be perfected by continued occupancy and improvement of the land, and that a right of way perfected by a railway under R. S. sec. 2477 cannot be defeated by mere relation back from a homesteader's subsequent patent to the time of his antecedent entry on the land. The latter case, however, holds that the entryman is entitled to compensation for improvements made by him on the land appropriated by the railway.

In *Norton v. Evans*, (C. C. A. 1897) 82 Fed. Rep. 804, it is said that the preliminary entry creates no vested rights as against the United States and does not interfere with the power of Congress to dispose of the land by subsequent legislation. It is believed, however, that this statement is not strictly accurate and that by making a valid entry in the manner prescribed by this section, the entryman acquires a right in the land which can be defeated only by his failure to comply with the requirements of the statute, as, while the title to the land remains in the United States until the issuance of the patent, it is subject to divestiture on the making of the final proof required by the statute. In other words, the right which an entryman acquires by his entry is absolute as against third persons. As to the government such right is only conditional and inchoate, but becomes perfect when he performs all of the conditions and complies with all the requirements of the statute. *Shiver v. U. S.*, (1895) 159 U. S. 491. And see opinion of Atty.-Gen. MacVeagh, 1 Copp. Pub. Land Laws 1892, p. 388, *quoted with approval* in *U. S. v. Turner*, (1892) 54 Fed. Rep. 228.

Who may enter homestead.—"It is not to every person indiscriminately that the privileges of the Homestead Act are extended. It is confined to any person who is the head of a family, or who has arrived at the age of twenty-one years and is a citizen of the United States, or who has filed his intention to become such as required by the naturalization laws; or he must be a person owning and residing on land who is allowed to enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres." *Stewart v. Altstock*, (1892) 22 Oregon 182.

A corporation is not capable of making a homestead entry, as it is not a citizen of the United States within the meaning of the Homestead Law, nor can a corporation acquire public land by means of an agreement with an individual whereby the latter agrees to make the homestead entry and transfer his interest to the corporation after his title has been perfected. *Pacific Livestock Co. v. Gentry*, (1901) 38 Oregon 275.

Right of pre-emptor to make homestead entry.—A person who makes a pre-emption entry of eighty acres of public land and claims the same under the pre-emption law cannot, before final proof, claim another eighty acres under a homestead entry, as residence is essential under both the homestead and pre-emption law. *Ard v. Brandon*, (1890) 43 Kan. 425.

Waiver of alienage by United States.—"In the absence of any adverse claim, the sale of land, under section 2301 of the Revised Statutes, to one who has declared his intention to become a citizen, is a waiver of any objection on the part of the United States that the purchaser was an alien when he made his application under section 2289, and the commissioner of the general land office cannot subsequently retract that waiver

and forfeit the right to the land on account of that objection." *Bogan v. Edinburgh American Land Mortg. Co.*, (C. C. A. 1894) 63 Fed. Rep. 192.

Homestead only in land subject to pre-emption.—Before the repeal of the statutes in regard to the pre-emption of public lands, it was held that no land was subject to entry as a homestead unless it was subject to pre-emption. *U. S. v. Reed*, (1886) 28 Fed. Rep. 482.

Land covered by pre-emption entry is not subject to homestead entry.—*Merriam v. Bacioni*, (1896) 112 Cal. 191.

Lands containing known salines or mines.—No lands on which are situated any known salines or mines are subject to homestead entry. *U. S. v. Reed*, (1886) 28 Fed. Rep. 482.

A patent issued on a homestead entry for land on which any known salines or mines are situated, is void. *Morton v. Nebraska*, (1874) 21 Wall. (U. S.) 660.

And a suit in equity may be maintained by the United States to cancel such a patent. *McLaughlin v. U. S.*, (1892) 107 U. S. 528.

Lands to which the Indian title has not been extinguished are not subject to homestead entry, as they have never become part of the public domain. *U. S. v. La Chappelle*, (1897) 81 Fed. Rep. 152; *King v. McAndrews*, (C. C. A. 1901) 111 Fed. Rep. 860, (1900) 104 Fed. Rep. 430.

The fact that land is such as might be acquired under the Timber Act (Act of June 3, 1878, 20 Stat. L. 89) ought not to preclude any person from acquiring title thereto under the Homestead Law, provided he makes his entry before any other person applies to purchase under the Timber Act. *Johnson v. Bridal Veil Lumbering Co.*, (1893) 24 Oregon 182, *citing* 4 Dec. Dept. Int. 441, 6 Dec. Dept. Int. 288.

Lands appropriated to other uses by the United States are not subject to homestead entry. *Stewart v. Altstock*, (1892) 22 Oregon 182.

The fact that the title to land is in the United States, does not necessarily make it a part of that public domain which is subject to homestead settlement, as the statute is explicit that any lands which have been reserved by any treaty, law, or proclamation of the President, are not part of the public lands of the United States, so far as homestead entry is concerned, so long as such reservation continues. *U. S. v. Payne*, (1881) 8 Fed. Rep. 883.

Patent for land reserved is invalid.—“When by Act of Congress a tract of land has been reserved from homestead and pre-emption, or dedicated to any special purpose, proceedings in the land department in defiance of such reservation or dedication, although culminating in a patent, transfer no title, and may be challenged in an action at law. In other words, the action of the land department cannot override the expressed will of Congress, or convey away public lands in disregard or defiance thereof.” Hence a decision of the land department of the United States that lands homesteaded were not at

the time of entry within the limits of any city but were subject to homestead, is not conclusive upon the courts. *Burfenning v. Chicago, etc., R. Co.*, (1896) 163 U. S. 321.

What is not withdrawal from entry.—Under the Act of Congress of July 2, 1864 (13 Stat. L. 365), granting public lands to the Northern Pacific Railroad Company, whenever a plat of the general route of the road shall have been filed in the office of the commissioner of the general land office, section 6 of which Act provides that the lands thereby granted “shall not be liable to sale, or entry, or pre-emption before or after they are surveyed, except by said company,” the Act, and the order of the commissioner of the general land office declaring that the company had duly filed such map showing its general route through certain public lands, and withdrawing from sale or entry all the odd-numbered sections falling within the forty-mile limit of the land grant along said line, does not constitute a withdrawal from sale or entry from that date so that they are not subject to homestead entry by a homestead claimant who settled on a portion thereof prior to the definite location of the line of road. *Nelson v. Northern Pac. R. Co.*, (1903) 188 U. S. 108; *Northern Pac. R. Co. v. McCormick*, (1898) 89 Fed. Rep. 659. See also *Oregon, etc., R. Co. v. U. S.*, (1903) 189 U. S. 103. *Contra*, *Northern Pac. R. Co. v. Nelson*, (1900) 22 Wash. 521.

The word “entry” covers homestead applications. —The Act of July 2, 1864, authorizing the withdrawal from sale or entry of certain public lands along the line of the Northern Pacific Railroad, excludes such lands from the operation of the Homestead Law, as the word “entry” covers homestead applications. *Northern Pac. R. Co. v. Nelson*, (1900) 22 Wash. 521.

Homestead in land along line of railroad.—In fixing the ordinary price of public lands at \$1.25 per acre, and the price for alternate reserved lands along the line of railroads at \$2.50 per acre, and providing that only 80 acres of the alternate reserved lands might be homesteaded as against 160 acres of ordinary public lands, Congress in no manner limited the right of homestead, but simply declared that the alternate reserved lands should be considered as worth \$2.50 per acre instead of \$1.25, the ordinary price of public lands. All appropriations by individuals were based upon that valuation, but the right to appropriate was in no manner changed. The reason for the difference in price is that railroads ordinarily enhance the value of contiguous lands, and when Congress granted only the odd sections in aid of their construction, it believed that such construction would make the even and reserved sections of at least double value. *U. S. v. Ingram*, (1899) 172 U. S. 327.

Entry cannot be made on land in actual possession of another, even though the entry is accomplished without the use of force, but this rule does not apply where the first party has a mere constructive possession. *Goodwin v. McCabe*, (1888) 75 Cal. 584.

And an entryman who goes peaceably upon

a portion of the tract entered as a homestead entry on the whole tract, notwithstanding the law has the right to make his homestead entry on the whole tract, notwithstanding the fact that the greater portion of it is in the possession of a mere naked trespasser who has placed the portion of which he holds possession within an unauthorized enclosure. *Whitaker v. Pendola*, (1889) 78 Cal. 296.

Quantity of land which one person may enter.—An entire section cannot be entered as a homestead by one person, the maximum quantity which one person may homestead being one hundred and sixty acres. *U. S. v. Payne*, (1881) 8 Fed. Rep. 883.

But the custom of the land department to allow the entry of a technical quarter section to be made under the provision of the homestead laws, regardless of its actual area, the claimant being required to purchase any excess over the one hundred and sixty acres allowed by law as a homestead, at the rate provided by law, is not erroneous. *Tictin v. U. S.*, (1900) 36 Ct. Cl. 1.

Sufficiency of residence question of fact.—Where a landowner sought to enter certain contiguous land as a homestead, and the secretary of the interior, on appeal, decided that he had not maintained the residence on the original farm required by the statute, it was held that the question of residence was one of fact, and that the court had no jurisdiction to review the secretary's decision thereon, in the absence of a clear showing that the decision was procured by fraud or imposition; and this, too, in spite of the facts that the landowner's ownership and title of the original land were sufficient to entitle him to an additional farm homestead, and the secretary erred as a matter of law in his conclusions in regard thereto. *Stewart v. McHarry*, (1895) 159 U. S. 643; *McHarry v. Stewart*, (Cal. 1893) 35 Pac. Rep. 141.

A residence for voting purposes in another precinct than that in which the land located is situated, precludes an entryman from claiming residence at the same time on the land for homestead purposes. *Small v. Rakestraw*, (1903) 28 Mont. 413.

Mistake as to location of house.—Where the house in which a homestead claimant was living at the date of the homestead entry, was not on the land entered but was a short distance therefrom, but the entryman believed at the time of the entry that his house was on the land entered, and the mistake in the location thereof was corrected by him by the removal of his actual residence to the land covered by the entry as soon as its true boundaries were discovered, it was held that the original homestead entry was valid. *Wormouth v. Gardner*, (1894) 105 Cal. 149.

Homestead entry severs land from public domain.—A homestead entry which is *prima facie* valid removes the land, temporarily at least, out of the public domain and beyond the reach of other homestead entries or subsequent grant by Congress. *Hastings, etc., R. Co. v. Whitney*, (1889) 132 U. S. 357,

affirming (1886) 34 Minn. 540; *Hodges v. Colcord*, (1904) 193 U. S. 192; *U. S. v. Turner*, (1892) 54 Fed. Rep. 228; *Sproat v. Durland*, (1894) 2 Okla. 24.

Though the entry is ineffectual to vest any rights in the entryman and therefore is void as to him, it is effectual to prevent the acquisition of homestead rights by another until it has been set aside. Hence, one who institutes a contest and obtains a relinquishment of the original entryman's right is entitled to a patent to the land as against another who attempts to enter on the ground that the original entry was void. *Hodges v. Colcord*, (1904) 193 U. S. 192.

A homestead entryman is entitled to possession of the land entered as against any one who cannot show such a standing in the land department as will entitle him to an equal right. *U. S. v. Turner*, (1892) 54 Fed. Rep. 228; *Hastay v. Bonness*, (1901) 84 Minn. 120; *Reaves v. Oliver*, (1895) 3 Okla. 62. See also *Littlefield v. Todd*, (1895) 3 Okla. 1.

Priority of first entryman.—The person who is first in point of time in the filing of a homestead entry has the right to the exclusive use of the land entered. *Sproat v. Durland*, (1894) 2 Okla. 24.

Entry as defense to action of ejectment.—Where the proceedings are valid, one who has made his homestead entry under the laws of the United States and has paid the sums required by the statute, has thereby connected himself as far as is possible with the government title and has done enough to enable him to defeat an action of ejectment by one who has no title but mere possession, notwithstanding the fact that the time for the issuance of the final certificate has not elapsed. *Goodwin v. McCabe*, (1888) 75 Cal. 584.

Settler on land entered by another is trespasser.—One who settles on land which has been segregated from the public domain by a homestead entry, made by another person, which is valid and remains of record, is a mere trespasser. *Sproat v. Durland*, (1894) 2 Okla. 24.

Entryman's remedy against trespasser.—One who has a valid homestead entry on public land is entitled to a mandatory injunction to protect his possession against trespassers. *Sproat v. Durland*, (1894) 2 Okla. 24; *Reaves v. Oliver*, (1895) 3 Okla. 62.

Superior right of actual settler.—"Whenever a homestead entry has been made, followed by no settlement or occupation on the part of the one making the entry, and that homestead entry has, by lapse of time or relinquishment, or otherwise, been ended, any one in actual possession as a settler and occupier of the land has a prior right to perfect title thereto." And under the provisions of the Act of May 14, 1880, 21 U. S. Stat. L. 140, the entry of such actual settler will relate back to the date of his settlement, so as to defeat an intermediate entry made by one to whom the original entryman relinquished his rights. *Moss v. Dowman*, (1900) 176 U. S. 413. See also *Hodges v. Colcord*, (1904) 193 U. S. 192.

Rights of settler who failed to make entry.

— A person who entered on a tract of land subject to entry as a homestead and cleared and cultivated a part of it and erected improvements for a residence, intending to enter it as a homestead, but who did not make the preliminary affidavit, declaration, or payment required in such cases, did not acquire such a right to the land as entitled him to demand a conveyance of the legal title from the trustees of the University of Alabama, in whom it was vested by virtue of the selection of the land by the agents of the state of Alabama under the Act of Congress "to increase the endowment of the university from the public lands in the state" (23 U. S. Stat. L. 12), and the approval of such selection by the secretary of the interior. *Higgins v. State University*, (1891) 94 Ala. 380.

Rights of person whose entry refused.

— Where a person alleged that he had a right to enter certain land as a homestead and had tried to do so but that his application had been erroneously refused by the local land officers, and on the strength of such allegations sought to have the court declare that he stood in the position of one who had actually made a homestead entry and had acquired such a right in the land as was beyond the power of Congress to disturb by subsequent legislation, it was held that such an entry created no vested rights as against the United States and did not interfere with the power of Congress to dispose of the land

by subsequent legislation. *Norton v. Evans*, (C. C. A. 1897) 82 Fed. Rep. 804.

Jurisdiction of state courts to determine right of entry.— The question as to whether or not a person would have the right to enter land as a homestead if the patent under which another person claims title were void, cannot be the subject of a civil action in any state court. *White v. Clarke*, (1896) 111 Cal. 425.

A state court may, for some purposes, deal with the right of possession of public land prior to the issuance of the patent, but it cannot by its judgment in an action between contesting claimants of the right to enter a tract of public lands, forestall the action of the land department of the United States in the contest between the claimants. *Merriam v. Bachioni*, (1896) 112 Cal. 191. See also *Littlefield v. Todd*, (1895) 3 Okla. 1.

While the title to the land remains in the United States it is for the officers of the land department to deal with questions affecting the rights of the various parties who desire to acquire title. A state court will not interfere with or attempt to determine such questions; it will deal only with the question of possession, and in order to determine such question will look into the record sufficiently to advise itself as to the true status of the parties in the land department. Whenever the facts are undisputed, the courts will apply the law to the status of the parties as justice may require. *Sproat v. Durland*, (1894) 2 Okla. 24; *Reaves v. Oliver*, (1895) 3 Okla. 62.

Sec. 2290. [*Mode of procedure.*] That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age, and that such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself, or herself, and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person, except himself, or herself, and upon filing such affidavit with the register or receiver on payment of five dollars when the entry is of not more than eighty acres, and on payment of ten dollars when the entry is for more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified. [R. S.]

This section was amended to read as above by the Act of March 3, 1891, ch. 561, sec. 5, 26 Stat. L. 1098.

The section originally read as follows:

"SEC. 2290. The person applying for the benefit of the preceding section shall, upon application to the register of the land-office in which he is about to make such entry,

make affidavit before the register or receiver that he is the head of a family, or is twenty-one years or more of age, or has performed service in the Army or Navy of the United States, and that such application is made for his exclusive use and benefit, and that his entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person; and upon filing such affidavit with the register or receiver, on payment of five dollars when the entry is of not more than eighty acres, and on payment of ten dollars when the entry is for more than eighty acres, he shall thereupon be permitted to enter the amount of land specified." Act of May 20, 1862, ch. 75, 12 Stat. L. 392; Act of March 21, 1864, ch. 38, 13 Stat. L. 35; Act of June 21, 1866, ch. 127, 14 Stat. L. 67.

Affidavit.—See further Act of June 9, 1880, ch. 164, *infra*, p. 298, and note thereunder.

Homestead is for entryman's exclusive benefit.—The title to the land entered cannot inure to the benefit of any person other than the entryman, nor can trust relations legally exist between the entryman and any other person in respect to the land entered. The entryman renounces all such trust relations and obligations by the affidavit he makes on application to enter the homestead when he swears that his application is made for his own exclusive use and benefit and that it is not made directly or indirectly for the use of any other person. *Shorman v. Eakin*, (1886) 47 Ark. 351; *Clark v. Bayley*, (1874) 5 Oregon 343.

Entry for benefit of partnership.—Where a person, before or at the time of filing his application for homestead entry, agrees with his partners to file the application "under the United States homestead laws and get the title for the benefit of the partnership," the agreement is in contravention of the spirit and policy of the homestead laws and hence is illegal and void. *Matter of Groome*, (1892) 94 Cal. 69; *Clark v. Bayley*, (1874) 5 Oregon 343.

And if the entryman after acquiring title makes a parol agreement in the settlement of the accounts of the partnership that the land belongs to the partnership, such agreement is inoperative to create any trust or vest in the entryman's partners any estate in the land. *Matter of Groome*, (1892) 94 Cal. 69.

Entry by son for benefit of father.—Where a person qualified to enter land under the homestead laws occupied certain lands which were subject to homestead entry without making application for entry, and subsequently his son, who lived with him upon the land, made a homestead entry thereof by false and fraudulent representations, and on learning of the entry the father went to the son and demanded an explanation, stating that the entry was irregular and illegal, to which the son replied that he had made the entry for the protection and benefit of the father and to prevent any other person from securing the land, and told the father that if he would not object to or contest the entry

he would secure the title to the land from the United States for the father's use and benefit, and in due time the son obtained a patent but died without fulfilling his promise, it was held that the son's entry was illegal and void and that a court of equity would not sustain a bill brought by the father to impress a trust in his favor on the land entered. *Moore v. Moore*, (1900) 130 Cal. 110.

Implied agreement to enter homestead for benefit of another.—Where land was entered as a homestead by an employee of a corporation, and the evidence showed that a conspiracy existed, whereby the entryman was to transfer the land to the corporation after perfecting his title, it was held that even though no express agreement to that effect had been entered into by the parties, the transaction was against public policy, and that upon the employee's repudiation of the agreement and retention of the land for his own benefit, equity would not interfere at the instance of the corporation, but would leave the parties where their own conduct had placed them. *Pacific Livestock Co. v. Gentry*, (1901) 38 Oregon 275.

What is not entry for benefit of another.—Where a person who believed that he would be able to obtain a valid title to certain land from a corporation to which it was supposed to belong, executed in good faith a good bond to convey such land to another person as soon as he procured the title, and it was subsequently ascertained that the title was not in the corporation, but that the United States was still the owner of the land, which was subject to homestead, and thereupon the parties to the bond agreed that the obligee should make a homestead entry of the land and procure the title thereto from the government for his own use and benefit and pay the obligor the price originally stipulated, less such sum as the obligor should recover as damages from the corporation for failure of title, but that in other respects the original contract should remain as executed, it was held that the agreement as modified was not in violation of the homestead laws, as there was no undertaking on the part of the obligee to obtain the title for the obligor, but on the other hand, there was a lawful attempt on the part of both parties to carry out the purpose of the original contract, and in pursuance of its intention to vest the title to the land in the obligee. *Frink v. Hoke*, (1890) 35 Oregon 17.

An agreement to allow others a right of way over his homestead does not conflict with the applicant's affidavit that the homestead is taken for his "exclusive use and benefit," as every one holds his property subject to such easements, and an applicant for a homestead has the right to make such an agreement without laying himself liable to the imputation that he is falsely entering land in his own name for the use and benefit of another. *U. S. v. Reed*, (1886) 28 Fed. Ren. 482.

Conveyance of water right.—The homestead law prohibits only an agreement to sell the land or any part thereof or

the timber thereon, and the prohibition does not apply to a conveyance of a portion of the water flowing in a stream on the land and of a right of way to convey said water across said land, where such agreement was made prior to the homestead entry and there is nothing to show that either party had in contemplation the making of the homestead entry. *Mt. Carmel Fruit Co. v. Webster*, (1903) 140 Cal. 183.

Title conferred by receiver's receipt.—The receiver's receipt issued to a homestead entryman in possession claiming land under the provisions of this section constitutes ample title to enable him, as owner of the land, to maintain or defend a suit concerning it. *Morrison v. Coleman*, (1888) 87 Ala. 655.

Thus such receipt confers sufficient title to enable the entryman to maintain, before the expiration of five years, an action of ejectment or a statutory action in the nature thereof, *Gulf, etc., R. Co. v. Clark*, (C. C. A. 1900) 101 Fed. Rep. 678; *Case v. Edgeworth*,

(1888) 87 Ala. 203; or a petitory action, *Broussard v. Broussard*, (1891) 43 La. Ann. 921; or to defend an action of ejectment brought by one who has no title but merely possession, *Goodwin v. McCabe*, (1888) 75 Cal. 584.

In like manner the receipt is sufficient title as against a wrongdoer who does not connect himself with any claim or interest in the land to enable the entryman to recover from such wrongdoer the damages which he has caused to the property. *Gulf, etc., R. Co. v. Clark*, (C. C. A. 1900) 101 Fed. Rep. 678; *Case v. Edgeworth*, (1888) 87 Ala. 203.

False oath that land is for entryman's exclusive benefit is perjury.—The entryman is required to make affidavit that the land is entered for his own use exclusively and not directly or indirectly for the benefit of another, and he is guilty of perjury if he swears falsely in this respect for the purpose of obtaining the title. *Clark v. Bayley*, (1874) 5 Oregon 343.

Sec. 2291. [*Certificate and patent, when given and issued.*] No certificate, however, shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death, proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in section twenty-two hundred and eighty-eight, and that he, she, or they will bear true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law. [*R. S.*]

Act of June 21, 1866, ch. 127, 14 Stat. L. 67.

Amendment.—This section is amended by the Act of March 3, 1877, ch. 122, *infra*, p. 298.

Lands in Oklahoma.—See *infra*, div. XIII.
Right to homestead vests on making final proof.—"Under the United States homestead laws, and by a compliance with them, a person entering a homestead, or in case of his death, his widow, or in case of the death of both, his heir or devisee, obtains a vested right in the homestead at the expiration of five years from the entry thereof, and upon making proper proof is entitled to a patent for the land from the United States." *Newkirk v. Marshall*, (1886) 35 Kan. 77.

Cancellation of patent for insufficient residence.—A patent issued under this section will be canceled in a suit brought by the United States for that purpose, where the proof taken in the suit clearly shows that there was no actual residence by the entrywoman, nor by her heirs after her death, upon the land prior to the issuance of the patent, and the proofs taken in the land office on which the entry was allowed do not show that there was ever continuous residence for

the period of five years, but only go to the extent of showing that the original entrywoman lived on the land for a period of three or four months before she was taken ill, without showing that there was any residence on the land after such time. *U. S. v. Perry*, (1891) 45 Fed. Rep. 759.

Devise of homestead before issuance of patent.—This section provides who shall succeed to the rights of the entryman, if he dies before his title is perfected, by a patent, and prohibits him from making any disposition of any interest he may have in the land before the issuance of patent. Hence, the will of an entryman who dies before issuance of the patent is inoperative, in so far as it attempts to pass the title to, or an interest in, the homestead. *Chapman v. Price*, (1884) 32 Kan. 446.

Succession of widow to inchoate homestead right.—The estate granted to a homestead settler is granted subject to certain conditions precedent, the conditions being residence for the required time, cultivation, and final proof. Until all of these conditions are complied with the law gives the settler no more than the right of possession, and his interest in the homestead will not pass on

his death even to his heirs or devisees. In case of his death before the completion of the conditions his widow will have all the rights which he would have had. His right is extinguished by his death, and she, by virtue of the fact that she is his widow, is designated as the donee of the land. The homestead right will inure to the benefit of the children only in the case of the death of both father and mother before the making of final proof. *Crist v. Cosby*, (1902) 11 Okla. 635; *McCune v. Essig*, (C. C. A. 1903) 122 Fed. Rep. 588, *affirming* (1902) 118 Fed. Rep. 273; *Jarvis v. Hoffman*, (1872) 43 Cal. 314; *Perry v. Ashby*, (1877) 5 Neb. 291.

Where the entryman died without making final proof, and his widow made such proof and complied in all things with the provisions of this section, and her proofs were accepted as sufficient by the land officers, but by mistake the patent for the land was issued to the entryman's heirs instead of to her, it was held that upon such compliance by the widow with the law she became the equitable owner of the land, and that the patentees held the legal title in trust for her, and that a court of equity would enforce the trust. *Hayes v. Carroll*, (1898) 74 Minn. 134.

Parol gift by widow to child.—Where an entryman died before making final proof and left a will devising one-half of the homestead to his wife and one-half to his daughter, and the widow, soon after her husband's death, made final proof and had a patent for the homestead issued to her, after making an oral promise to the child to give her half of the homestead, and the child in pursuance of such promise entered on the land with her husband and made valuable improvements thereon, it was held that the mother was not entitled to maintain an action of ejectment to recover the half so occupied by the child and her husband, as it was only fair and just that the homestead should be equally divided between the survivors of the entryman. And it was also held that the case was taken out of the statute of frauds by the fact that the child and her husband took possession of the land under the parol agreement and made lasting and valuable improvements thereon. *Newkirk v. Marshall*, (1886) 35 Kan. 77.

Succession of heirs to inchoate homestead right.—If a homestead claimant dies before the issuance of the patent or before the right to demand a patent has accrued the land does not become a part of his estate. Upon his death all his right under the homestead entry ceases and his heirs become entitled to a patent, not because they have succeeded to his equitable interest but because the law gives them preference as new homesteaders and allows them the benefit of the residence of their ancestors upon the land. If there are no heirs capable as citizens of the United States to succeed to the entryman's right, the land becomes again open to settlement as a part of the public domain by any qualified homesteader. The entryman's administrator does not, as such, succeed to any rights in the homestead, nor does the law invest the administrator with any rights therein simply because there are no heirs. *Gjerstadengen*

v. Van Duzen, (1898) 7 N. Dak. 612; *Towner v. Rodegeb*, (1903) 33 Wash. 153.

The minor children of an entryman who dies leaving a will, after the death of his wife and before the issuance of the patent, are not required to make any election to take under the provisions of the will instead of as the testator's heirs, but may claim the homestead tract as their own, and also share in the estate under the will. *Lewis v. Lichty*, (1891) 3 Wash. 213.

Time within which minor heirs may make final proof.—Where the entryman died before final proof, but after having complied up to the time of his death with all of the requirements of the statute concerning his entry, leaving minor children but no widow, it was held that, under the provisions of R. S. secs. 2291 and 2292, the homestead right inured to the benefit of his surviving minor children, and that such right remained valid and subsisting for at least two years after his death, so that a location made by a railroad company before the expiration of the two years was ineffectual to confer any right on the company. *Atchison, etc., R. Co. v. Pracht*, (1883) 30 Kan. 66.

Alien heirs cannot perfect title.—The homestead law vests the rights in the land in the claimant himself for his exclusive benefit, and if he die before patent issues, leaving no widow, then in his heirs or devisees if they be at the time citizens of the United States. But alien heirs are incompetent to make proof and secure title to a homestead. *Towner v. Rodegeb*, (1903) 33 Wash. 153.

Community property in homestead.—Lands acquired under the homestead laws of the United States are community property when the title is obtained during marriage, as they are acquired by purchase within the meaning of the statutes regarding community property. And when an entryman marries between the making of final proof and the issuance of the patent, the legal title to the land vests in the community. *Kromer v. Friday*, (1895) 10 Wash. 621.

Where the inchoate title to the homestead had its inception during the existence of the community, the legal title conferred by the issuance of the patent to the surviving spouse, after the dissolution of the community by death, inured to the benefit of the community heirs. *Ahern v. Ahern*, (1903) 31 Wash. 334. *Contra*, *Bolton v. La Camas Water Power Co.*, (1894) 10 Wash. 246.

The laws of the state in which the land is situated apply for the purpose of determining whether or not it is community property. *Ahern v. Ahern*, (1903) 31 Wash. 334, *following* *Kromer v. Friday*, (1895) 10 Wash. 621.

Though this section contains no express prohibition of alienation, and provides no forfeiture in case of alienation, the homestead right cannot be perfected after alienation, or contract of alienation, without perjury by the homesteader. *Anderson v. Carkins*, (1890) 135 U. S. 483.

Alienation within five years forfeits right.—Where the applicant took none of the

steps required by the statute except to make the application to enter and to pay the small sum required for the filing of such application, but alienated the land within five years after the application, without having resided on the land or having improved or cultivated it, it was held that he forfeited his right to a final certificate and patent and that his conveyance transferred no title to his purchaser. *Lindsey v. Veasy*, (1878) 62 Ala. 421.

The same affidavits in respect to alienation are required from federal soldiers to enter homesteads, under the provisions of R. S. sec. 2304, as are required from other persons entering homesteads. *Anderson v. Carkins*, (1890) 135 U. S. 483.

Waiver of right of entry is alienation.—An entry of government land by a qualified person is an entry made by virtue of a government statute, though made in violation of an agreement with another person to waive the right in favor of the latter. The right of a successful contestant to enter a certain tract of land can neither be sold nor transferred, and a contract whereby the successful contestant agrees for a valuable consideration to waive his right of entry is not susceptible of specific performance. A decree based on such a contract directing a relinquishment of the entry is unenforceable, and its disobedience does not constitute contempt of court. *Dameron v. Dingee*, (1892) 1 Colo. App. 436.

Sale of land or interest therein.—An agreement made by a homestead entryman after application, but before completion of the entry, for the sale and conveyance of the land entered or part thereof, is void as being against public policy. *Cox v. Donnelly*, (1879) 34 Ark. 762. Compare *Spieß v. Neuberger*, (1888) 71 Wis. 279.

A contract to convey in the future, coupled with a receipt of the purchase money, is in substance, and within the spirit of the statute if not in form, as alienation. Such a contract is contrary to public policy, and a court of equity will not enforce specific performance thereof. *Anderson v. Carkins*, (1890) 135 U. S. 483, reversing (1887) 21 Neb. 364; *McCrillis v. Copp*, (1893) 31 Fla. 100; *Mellison v. Allen*, (1883) 30 Kan. 382; *Carley v. Gitchell*, (1895) 105 Mich. 38. See also *Oaks v. Heaton*, (1876) 44 Iowa 116; *Dawson v. Merrill*, 2 Neb. 119, overruled in *Carkins v. Anderson*, (1887) 21 Neb. 364, which was reversed in (1890) 135 U. S. 483.

And it seems that an agreement to convey after the issuance of the patent is void, though the consideration is not to be received until the conveyance is executed. *Oaks v. Heaton*, (1876) 44 Iowa 116; *Dawson v. Merrill*, 2 Neb. 119, overruled in *Carkins v. Anderson*, (1887) 21 Neb. 364, which was reversed in (1890) 135 U. S. 483. *Contra*, *Townsend v. Fenton*, (1883) 30 Minn. 528.

But where a person relinquished his homestead right to another person, and guaranteed such other person that he should enter into possession of the land and acquire homestead rights therein, it was held that the

relinquishment and guaranty constituted a good consideration for a promissory note executed by the person to whom the guaranty was made. *Moore v. McIntosh*, (1870) 6 Kan. 39.

And where the entryman contracted to convey the land when title should be acquired, and the contract provided for part payment in breaking prairie land at a specified price per acre, the breaking to be paid in cash if the land was not conveyed, it was held that the alleged illegality of the contract would not defeat a recovery of the price of the breaking, whether or not it would defeat a suit for specific performance. *Simmons v. Yurann*, (1881) 11 Neb. 516, followed in *Bateman v. Robinson*, (1882) 12 Neb. 508.

Mortgage is not alienation.—An entryman may swear that no part of the land which he seeks to have conveyed to him by the United States has been alienated, though he has mortgaged his claim before final certificate in order to procure money with which to improve his land or for any other purpose, provided he seeks in good faith to acquire the land as a homestead within the meaning of this section. *Fuller v. Hunt*, (1878) 48 Iowa 163; *Dickerson v. Bridges*, (1898) 147 Mo. 235; *Orr v. Ulyatt*, (1896) 23 Nev. 134; *Stark v. Duvall*, (1898) 7 Okla. 213.

Under such circumstances the mortgagor will be estopped from denying the validity of the mortgage. *Stark v. Duvall*, (1898) 7 Okla. 213.

Sale after final proof but before patent.—When a person becomes entitled to a patent by reason of having made the final proof required by the statute, but the patent has not been issued, he may contract or be contracted with concerning the land, or sell or convey it, precisely the same as though the patent has already been issued. In order to protect the rights of all parties, where a patent is due and is not yet issued, equity will consider such rights precisely the same as though the patent had in fact been issued on the very first day on which it ought to have been issued. *Newkirk v. Marshall*, (1886) 35 Kan. 77.

In like manner the entryman may, after final proof but before issuance of the patent, make a valid dedication of a portion of the land for a public road; and after making such dedication he will be estopped to deny its validity. *Rube v. Sullivan*, (1888) 23 Neb. 779.

Alienation of interest in improvements.—This section is not violated by an agreement whereby the entryman, after entry but before the issuance of final certificate or patent, unites with another for the purpose of building a saw-mill on the land and dividing the profits arising from the operation of such mill, as such use of the land by the entryman is substantially for his own benefit and is consistent with his purpose to retain it also as a homestead. *Hot Springs R. Co. v. Tyler*, (1890) 36 Ark. 205.

And it has been held that the sale and surrender of an inchoate homestead claim, together with the improvements erected on the land by the entryman, is a good con-

sideration for a promissory note made by the purchaser, the improvements being subjects of legitimate bargain and sale, though the sale conveys no interest in the land itself as against the government. *McWilliams v. Bridges*, (1878) 7 Neb. 419; *Paxton Cattle Co. v. Arapahoe First Nat. Bank*, (1887) 21 Neb. 621.

Where the entryman before issuance of the patent sold the improvements which he had made on the land after having forfeited all claim to such improvements, it was held that the purchaser did not, by virtue of his purchase, acquire a prior right to enter the land as a homestead as against other persons desiring so to enter it. *Porter v. Bishop*, (1889) 25 Fla. 749.

Removal of improvements on cancellation of entry.—A homestead settler who makes improvements on a tract of government land, and whose entry is afterwards canceled, may remove the improvements after the land has been awarded to an adverse claimant. *Winans v. Beidler*, (1898) 6 Okla. 603.

Sale of improvements after relinquishment is valid.—Where, after making application for a homestead and erecting improvements on the land homesteaded, the entryman abandoned all intention of perfecting the homestead and executed a relinquishment to the United States of all claim to acquire title to the land, and subsequently sold to another person the improvements which he had erected, taking the purchaser's note therefor, it was held that the note was not illegal, as the transaction was not a sale of an imperfect homestead right. *Tarrance v. Hatfield*, (1881) 71 Ala. 234.

Grant of right of way to railroad.—A homestead entryman may, after entry but before final proof, grant to a railroad a right of way over the land entered. *U. S. v. Turner*, (1892) 54 Fed. Rep. 228.

A lease of timber for turpentine purposes is valid and enforceable, as it is not forbidden by any express statutory provision and is not contrary to public policy. *Orrell v. Bay Mfg. Co.*, (1903) 83 Miss. 800.

Rights of entryman in respect to timber before issuance of patent.—Prior to the issuance of the final certificate the rights of a homestead entryman in respect to the timber standing on the land entered are analogous to those of a tenant for life or for years, *Shiver v. U. S.*, (1895) 159 U. S. 491; *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615; or of a person in possession under an uncompleted contract of purchase, *U. S. v. Ball*, (1887) 31 Fed. Rep. 667.

When he acts in good faith and has the intention of perfecting his entry in the manner prescribed by the homestead laws, and within the spirit of those laws, he may cut or remove timber for the purpose of preparing the land in the ordinary way for cultivation, *Shiver v. U. S.*, (1895) 159 U. S. 491; *The Timber Cases*, (1881) 11 Fed. Rep. 81; *U. S. v. Williams*, (1883) 18 Fed. Rep. 475; *U. S. v. Ball*, (1887) 31 Fed. Rep. 667; *U. S. v. Murphy*, (1887) 32 Fed. Rep. 376; *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615; *Grubbs v. U. S.*, (C. C. A.

1900) 105 Fed. Rep. 315; *King-Ryder Lumber Co. v. Scott*, (Ark. 1904) 84 S. W. Rep. 487; *Orrell v. Bay Mfg. Co.*, (1903) 83 Miss. 800; or for the purpose of erecting necessary and proper improvements on the land, *U. S. v. Murphy*, (1887) 32 Fed. Rep. 376; *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615. And within these limitations, it seems that he may cut timber for the purpose of cultivating his land even before he files his application for entry in the land office. *U. S. v. Yoder*, (1883) 5 McCrary (U. S.) 615.

When the timber is cut in good faith and for the cultivation of the land the entryman has the right to sell or otherwise dispose of the surplus so cut. *Shiver v. U. S.*, (1895) 159 U. S. 491; *The Timber Cases*, (1881) 11 Fed. Rep. 81; *U. S. v. Murphy*, (1887) 32 Fed. Rep. 376; *Grubbs v. U. S.*, (C. C. A. 1900) 105 Fed. Rep. 315; *King-Ryder Lumber Co. v. Scott*, (Ark. 1904) 84 S. W. Rep. 487.

Thus where a *bona fide* entryman was unable, by reason of his age and poverty, to do the necessary clearing to render the land cultivable, it was held that it was not improper for him to make a contract with another person, whereby the latter was to clear the land, erect a dwelling house and other buildings thereon for the entryman, break such portions of the land as could be cultivated, furnish the entryman with money for the purchase of the requisite stock to outfit the farm, and with provisions sufficient to keep him and his hired man, in consideration of which he was to receive timber to the value of the work done and money advanced and expended in behalf of the entryman; this, too, though the entryman was to receive money for part of the value of the timber so cut by the person with whom he contracted. *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615. See also *Grubbs v. U. S.*, (C. C. A. 1900) 105 Fed. Rep. 314.

When the timber is cut or sold for proper purposes by a *bona fide* entryman, the government can maintain neither a criminal prosecution, *Grubbs v. U. S.*, (C. C. A. 1900) 105 Fed. Rep. 315; or action of damages against the entryman, *U. S. v. Ball*, (1887) 31 Fed. Rep. 667; nor an action against the purchaser of the timber for its conversion, *U. S. v. Yoder*, (1883) 5 McCrary (U. S.) 615; *U. S. v. Ball*, (1887) 31 Fed. Rep. 667; *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615.

These principles, however, operate only to protect a *bona fide* entryman who cuts timber for the purpose of furthering the objects of the homestead laws. They cannot be invoked for the protection of an entryman who enters the land as a speculation for the purpose of denuding it of its timber, *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615; *Grubbs v. U. S.*, (C. C. A. 1900) 105 Fed. Rep. 314; or who cuts or sells the timber for profit without regard to the legitimate purposes of the homestead laws, *Shiver v. U. S.*, (1895) 159 U. S. 491; *The Timber Cases*, (1881) 11 Fed. Rep. 81; *U. S. v. Williams*, (1883) 18 Fed. Rep. 475; *U. S. v. Freyberg*, (1886) 32 Fed. Rep. 195; *U. S. v.*

Murphy, (1887) 32 Fed. Rep. 376; Conway v. U. S., (C. C. A. 1899) 95 Fed. Rep. 615; Grubbs v. U. S., (C. C. A. 1900) 105 Fed. Rep. 314; Orrell v. Ray Mfg. Co., (1903) 83 Miss. 800; even though he intends to acquire the title to the land from the government, as he might at any time after taking the timber change his intention and thus defeat the object of the law, *The Timber Cases*, (1881) 11 Fed. Rep. 81; U. S. v. Murphy, (1887) 32 Fed. Rep. 376.

For unlawful cutting or sale of the timber the government may maintain a criminal prosecution against the entryman, *Shiver v. U. S.*, (1885) 159 U. S. 491; *The Timber Cases*, (1881) 11 Fed. Rep. 81; or against the purchaser of the timber, U. S. v. Murphy, (1887) 32 Fed. Rep. 376; or may bring an action of damages against the persons at fault, U. S. v. Williams, (1883) 13 Fed. Rep. 473.

Where the timber was cut and removed under no mistake or accident, it was held that the lack of criminal intent on the defendant's part was no defense to a criminal prosecution for unlawful cutting; and it was also held that the fact that the defendant was misled by the representations of the local land officers into believing that he had the extended right to dispose of the timber standing on the land entered would present grounds for executive clemency, but would not constitute any legal defense for the defendant. U. S. v. Murphy, (1887) 32 Fed. Rep. 376.

When the defendant is a willful trespasser the measure of damages in an action for the unlawful cutting of timber is the full value of the property at the time of the bringing of the action, with no deduction for the defendant's labor and expense; and when the defendant is an unintentional or mistaken trespasser the measure of damages is the value of the timber at the time of the conversion, less the amount which the trespasser has added to its value. U. S. v. Williams, (1883) 13 Fed. Rep. 473; *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615.

Though an unauthorized sale of timber is void as to the government, it may be valid as to the parties, and the subsequent sale of the timber to a third party will constitute a bona fide purchase. *Anderson v. U. S.*, (1881) 11 Fed. Rep. 81; *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615.

The government is not bound to a purchaser of timber cut by a trespasser, and may recover the value of the timber from the purchaser. *U. S. v. Williams*, (1883) 13 Fed. Rep. 473.

When a person has entered land for homestead purposes, and has cut and removed the timber thereon, he is liable to the government for the value of the timber at the time of the cutting, less the amount which he has added to its value. U. S. v. Williams, (1883) 13 Fed. Rep. 473; *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615.

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either the entryman or the purchaser of the timber after the entryman has made final proof and received his final certificate, U. S. v. Ball, (1887) 31 Fed. Rep. 667; or has commuted his homestead entry into a cash entry, U. S. v. Freyberg, (1886) 23 Fed. Rep. 195.

The question whether or not the cutting or sale of timber is lawful, is a question of fact to be determined by the jury upon consideration of all the facts and circumstances of each particular case. The crucial question is the good faith of the entryman as gathered from his actions. In passing on this question the jury should take into consideration the entryman's situation, his financial condition, the state of his health, and other surrounding circumstances. The mere amount of timber cut is not of itself a criterion of the legality of the cutting. A *bona fide* entryman may, under some circumstances, be justified in cutting a large amount of timber, while a fraudulent entryman would have no right to cut a single tree. Nor is the length of the interval between the cutting and the cultivation an absolute test. It has been said that "the plow must follow the axe." But there is no more a conclusive legal presumption of guilt arising from failure to plow the land immediately after the timber is cut off than there is a conclusive legal presumption of innocence when the land is so plowed. A *bona fide* entryman might be unable, because of his poverty or other reasons, to cultivate the land within a reasonable time after the cutting, while a fraudulent homesteader might, for the purpose of screening his fraudulent design, plow the land immediately after stripping it of its timber. *Grubbs v. U. S.*, (C. C. A. 1900) 105 Fed. Rep. 314. See also *Conway v. U. S.*, (C. C. A. 1899) 95 Fed. Rep. 615.

On the issuance of a patent the entryman's title relates back to the initiation of his claim, so as to give him a right to maintain an action against a trespasser for the value of timber cut and removed from the land after entry and before the issuance of the patent. *Payton v. Desmond*, (C. C. A. 1904) 129 Fed. Rep. 1.

Escrope to obtain title after sale of rights.—Where a bill was filed alleging that the entryman had before final proof and that his widow and her interest to the defendant, who in turn sold the land and its improvements to the complainant for a valuable consideration, that such and that the complainant went into possession of the land and made valuable improvements, and was proceeding to take the necessary legal steps to secure the homestead when the defendant clandestinely procured from the United States land office a certificate of entry of the land in the name of the widow, and then a deed from the widow to himself, and thereupon instituted proceedings against the complainant to oust him, it was held that the bill showed that the conduct of the defendant was a violation of the homestead law, and a fraud on the rights of the complainant, and that the defendant was guilty of the crime of obtaining the right of possession against the complainant; that the de-

defendant should be deemed a holder of the legal title in trust for the complainant, and that upon payment by complainant of the balance due to the defendant, under the sale of the improvements and possession, with interest from the time it became due, the complainant would be entitled to a conveyance of the legal title provided the allegations of the bill were sustained. *Chesser v. De Prater*, (1884) 20 Fla. 691.

Rights and duties of settler pending issuance of patent.—Pending the issuance of the patent the "settler has the right to treat the land as his own so far, and so far only, as is necessary to carry out the purposes of the Act. The object of this legislation is to preserve the right of the actual settler, but not to open the door to manifest abuses of such right. Obviously the privilege of residing on the land for five years would be ineffectual if he had not also the right to build himself a house, outbuildings, and fences, and to clear the land for cultivation, and to that extent the Act limits and modifies the Act of 1831, 4 Stat. L. 472, ch. 66, now embraced in R. S. 2461. It is equally clear that he is bound to act in good faith to the government, and that he has no right to pervert the law to dishonest purposes, or to make use of the land for profit or speculation. The law contemplates the possibility of his abandoning it, but he may not in the meantime ruin its value to others who may wish to purchase or enter it. With respect to the standing timber, his privileges are analogous to those of a tenant for life or for years." *Shiver v. U. S.*, (1895) 159 U. S. 491; *Orrell v. Bay Mfg. Co.*, (1903) 83 Miss. 800. And see R. S. 2461, under **TIMBER LANDS AND FOREST RESERVATIONS**.

Taxation by state before issuance of patent.—Land entered as a homestead under this section becomes subject to state taxation when the final certificate therefor is issued, as the entryman thereby acquires the right to a patent to the land. *Burcham v. Terry*, (1892) 55 Ark. 398.

It has even been held that a homestead is liable to taxation by the state as soon as the owner has the right to make his final proof and complete his title, though the final certificate is not actually issued. *Bellinger v. White*, (1877) 5 Neb. 399.

Ownership of land pending issuance of patent.—The land entered continues to be the property of the United States for five years following the entry, and until the patent is issued, but is subject to divestiture upon making of the final proof required by this section.

United States.—*Shiver v. U. S.*, (1895) 159 U. S. 491; *U. S. v. Ball*, (1887) 31 Fed. Rep. 667.

Alabama.—*Lindsey v. Veasy*, (1878) 62 Ala. 421.

California.—*Thrift v. Delaney*, (1886) 69 Cal. 188.

Colorado.—*Schoolfield v. Houle*, (1889) 13 Colo. 394.

Washington.—*Bolton v. La Camas Water Power Co.*, (1894) 10 Wash. 246; *Kromer v. Friday*, (1895) 10 Wash. 621.

Wisconsin.—*Empey v. Plugert*, (1885) 64 Wis. 603.

Title conferred by final certificate.—The final certificate issued to the entryman by the register and receiver does not transfer the title to the land from the United States to the entryman, but simply furnishes *prima facie* evidence of an equitable claim on the government for a patent. *Guaranty Sav. Bank v. Bladow*, (1900) 176 U. S. 448; *Bolton v. La Camas Water Power Co.*, (1894) 10 Wash. 246; *Kromer v. Friday*, (1895) 10 Wash. 621.

Such a certificate is liable to cancellation at the direction of the land department, and those who deal in such certificates or found any right on them must be held to do so with full knowledge of their character and legal effect. *Guaranty Sav. Bank v. Bladow*, (1900) 176 U. S. 448.

Cancellation of final certificate for fraud.—An entry and final certificate issued to a settler under the Homestead Act for land subject to entry thereunder cannot be set aside by the land department on its own motion for fraud or mistake committed or occurring in obtaining or issuing such certificate. If the government wishes to have a certificate set aside for fraud, it must seek redress in the courts, where the matter can be heard and determined according to the law applicable to the rights of individuals under like circumstances. *Wilson v. Fine*, (1889) 40 Fed. Rep. 52.

Cancellation of patent for fraud.—The government may maintain a suit in equity to set aside a patent or cancel it, when its duty to the public requires such action, as where the issuance of the patent was constructively fraudulent because of the inadvertence and mistake of a subordinate clerk in the interior department in issuing the patent pending the prosecution of appeals by other claimants, and it is not necessary for the government to show that the patentee would not have prevailed if the appeals of the other claimants had been heard. *U. S. v. Reed*, (1892) 53 Fed. Rep. 405.

Patentee as trustee for equitable owner.—When the land laws of the United States confer upon a person a right to public lands on the existence of certain facts the right becomes fixed when the proper executive officer finds that those facts exist. If, therefore, the secretary of the interior issues to one person a patent, when under the facts decided by him another person is entitled to the land, ultimate rights will not be changed thereby, but the holder of the patent will be considered by the courts to hold the land in trust for the person to whom in equity it belongs. *McCord v. Hill*, (1901) 111 Wis. 499. And see *McCord v. Hill*, (1903) 117 Wis. 306.

Final proof by another inures to entryman's benefit.—Where an entryman deserted his wife after having complied with all the requirements of the law, so as to entitle him to a patent upon making final proof of residence, cultivation, nonalienation, and loyalty, as required by the statute, it was held that his equitable right to have the legal title

vested in him by the government was complete, and that he could not be deprived of this right by the fact that such final proof was made for him by his deserted wife or any other person; that by whomsoever made the proof inured to his benefit; and that, therefore, the action of the government in issuing the patent to him, thus vesting in him the whole title both legal and equitable, was proper. *Egbert v. Bond*, (1899) 148 Mo. 19.

Remedy of entryman against unlawful possession.—An entryman, out of possession and having a decision by the land office in his favor, who may proceed against his adversary in possession by an action of forcible detainer, has an adequate remedy at law

precluding him from resorting to the extraordinary remedies used by courts of equity. *Black v. Jackson*, (1900) 177 U. S. 349.

False oath to immaterial matter is not perjury.—Perjury cannot be predicated of a false oath to an affidavit not required by the statute. And this is true even though the affidavit is made pursuant to a departmental regulation requiring it, as such a regulation may have the force of law in a civil suit to determine property rights and yet be ineffectual as the basis of a criminal prosecution, the making an act a criminal offense being essentially an exercise of legislative power which cannot be delegated. *U. S. v. Maid*, (1902) 116 Fed. Rep. 650.

An act to amend section twenty-two hundred and ninety-one of the Revised Statutes of the United States, in relation to proof required in homestead entries.

[*Act of March 3, 1877, ch. 122, 19 Stat. L. 403.*]

[**SEC. 1.**] [*Proof of residence, etc., before whom made—effect and disposal of proofs—fees.*] That the proof of residence, occupation, or cultivation, the affidavit of non-alienation, and the oath of allegiance, required to be made by section twenty-two hundred and ninety-one of the Revised Statutes, may be made before the judge, or, in his absence, before the clerk, of any court of record of the county and State, or district and Territory, in which the lands are situated; and if said lands are situated in any unorganized county, such proof may be made in a similar manner in any adjacent county in said State or Territory; and the proof, affidavit, and oath, when so made and duly subscribed, shall have the same force and effect as if made before the register or receiver of the proper land-district; and the same shall be transmitted by such judge, or the clerk of his court, to the register and the receiver, with the fee and charges allowed by law to him; and the register and receiver shall be entitled to the same fees for examining and approving said testimony as are now allowed by law for taking the same. [*19 Stat. L. 403.*]

This and section 2 following were incorporated into the second edition of the Revised Statutes in section 2291. R. S. sec. 2291 is given *supra*, p. 292.

Affidavits.—See further Act of June 9, 1880, ch. 164, *infra*.

Commissioners authorized to administer oaths, etc. See Act of March 2, 1895, ch. 174, TERRITORIAL COURTS.

SEC. 2. [*Punishment for false swearing, etc.*] That if any witness making such proof, or the said applicant making such affidavit or oath, swears falsely as to any material matter contained in said proof, affidavits, or oaths, the said false swearing being willful and corrupt, he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. [*19 Stat. L. 404.*]

An act to amend sections twenty-two hundred and sixty-two and twenty-three hundred and one of the Revised Statutes of the United States, in relation to the settler's affidavit in pre-emption and commuted homestead entries.

[*Act of June 9, 1880, ch. 164, 21 Stat. L. 169.*]

[**Affidavits, before whom made.**] That the affidavit required to be made by sections twenty-two hundred and sixty-two and twenty-three hundred and one of the Revised Statutes of the United States, may be made before the clerk of the county court or of any court of record, of the county and State or district

and Territory in which the lands are situated; and if said lands are situated in any unorganized county, such affidavit may be made in a similar manner in any adjacent county in said State or Territory, and the affidavit so made and duly subscribed shall have the same force and effect as if made before the register or receiver of the proper land district; and the same shall be transmitted by such clerk of the court to the register and receiver with the fee and charges allowed by law. [21 Stat. L. 169.]

"R. S. sec. 2262, prescribes the oath to be taken by a claimant for land under the pre-emption laws. These have been repealed by 1891, March 3, ch. 561, sec. 4. Section 2301, here mentioned, has no reference to any affidavit. It is supposed that R. S.

sec. 2290 or 2291 is the section intended. These prescribe the oaths for a homestead applicant, but a substitute for the former is enacted by 1891, March 3, ch. 561, sec. 5." *Compilers' note, 1 Supp. R. S. 292.*

An act to provide additional regulations for homestead and pre-emption entries of public lands.

[Act of March 3, 1879, ch. 192, 20 Stat. L. 472.]

[SEC. 1.] [*Notice of intention to make final proof — publication.*] That before final proof shall be submitted by any person claiming to enter agricultural lands under the laws providing for pre-emption or homestead entries, such person shall file with the register of the proper land-office a notice of his or her intention to make such proof, stating therein the description of lands to be entered, and the names of the witnesses by whom the necessary facts will be established. Upon the filing of such notice, the register shall publish a notice, that such application has been made once a week for the period of thirty days, in a newspaper to be by him designated as published nearest to such land, and he shall also post such notice in some conspicuous place in his office for the same period. Such notice shall contain the names of the witnesses as stated in the application. At the expiration of said period of thirty days, the claimant shall be entitled to make proof in the manner heretofore provided by law. The Secretary of the Interior shall make all necessary rules for giving effect to the foregoing provisions. [20 Stat. L. 472.]

The pre-emption laws were repealed by Act of March 3, 1891, ch. 561, sec. 4, *supra*, p. 285.

SEC. 7. [*Completing proof extended in case of unavoidable delay.*] That the "act to provide additional regulations for homestead and pre-emption entries of public lands," approved March third, eighteen hundred and seventy-nine, shall not be construed to forbid the taking of testimony for final proof within ten days following the day advertised as upon which such final proof shall be made, in cases where accident or unavoidable delays have prevented the applicant or witnesses from making such proof on the date specified. [25 Stat. L. 855.]

This is from the Act of March 2, 1889, ch. 381, "An act to withdraw certain public lands from private entry, and for other purposes."

An act extending the time for final proof and payment on lands claimed under the public land laws of the United States.

[Act of July 26, 1894, ch. 164, 28 Stat. L. 123.]

[SEC. 1.] [*Time for making final proof and payment extended.*] That the time for making final proof and payment for all lands located under the homestead and desert land laws of the United States, proof and payment of which

has not yet been made, be, and the same is hereby, extended for the period of one year from the time proof and payment would become due under existing laws. [28 Stat. L. 123.]

SEC. 2. [*As to pre-emption claims.*] That the time of making final payments on entries under the pre-emption Act is hereby extended for one year from the date when the same becomes due in all cases where pre-emption entrymen are unable to make final payments from causes which they can not control, evidence of such inability to be subject to the regulations of the Secretary of the Interior. [28 Stat. L. 123.]

The pre-emption laws were repealed by Act of March 3, 1891, ch. 561, sec. 4, *supra*, p. 285, with a saving of rights as to pending claims.

An act to provide for the publication of notices of contest under the homestead, pre-emption, and tree-culture laws of the United States.

[Act of June 3, 1878, ch. 152, 20 Stat. L. 91.]

[SEC. 1.] [*Publication of notices of contest.*] That the notices of contest now provided by law under the homestead, pre-emption and tree-culture laws of the United States shall, after the passage of this act, be printed in some newspaper printed in the county where the land in contest lies; and if no newspaper be printed in such county, then in the newspaper printed in the county nearest to such land. [20 Stat. L. 91.]

The pre-emption and timber-culture laws were repealed by Act of March 3, 1891, ch. 561, secs. 1, 4.

An act for the relief of settlers on public lands.

[Act of May 14, 1880, ch. 89, 21 Stat. L. 140.]

[SEC. 1.] [*Relinquishment of claim — land open to entry.*] That when a pre-emption, homestead, or timber culture claimant shall file a written relinquishment of his claim in the local land-office, the land covered by such claim shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office. [21 Stat. L. 140.]

Voluntary relinquishment prior to this Act. — Although there was no provision of law prior to the passage of this Act for a voluntary relinquishment of lands entered under the homestead laws, an entryman had a right recognized by the uniform practice of the land department to disclaim and relinquish all interest in his entry under the provisions of R. S. sec. 2297. Upon such vol-

untary relinquishment, the land department was authorized to cancel the entry and restore the land to the public domain, as by the act of relinquishment the homestead entry no longer remained a subsisting entry sufficient to constitute such an appropriation of the tract as to segregate it from the public domain. *Keane v. Brygger*, (1895) 160 U. S. 276; *Keane v. Brygger*, (1891) 3 Wash. 338.

SEC. 2. [*Notice to contestant of cancellation of claim — preference right to entry — death of contestant.*] In all cases where any person has contested, paid the land-office fees, and procured the cancellation of any pre-emption, homestead, or timber-culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands: *Provided*, That said register shall be entitled to a fee of one dollar for the giving of such notice, to be paid by the contestant and not to be reported: *Provided further*, That should any such person who has initiated a contest die before the final termination of the same, said contest shall not abate by reason thereof, but his heirs who are citizens of the United States, may con-

tinue the prosecution under such rules and regulations as the Secretary of the Interior may prescribe, and said heirs shall be entitled to the same rights under this act that contestant would have been if his death had not occurred. [27 Stat. L. 270.]

This section was amended to read as above by the Act of July 26, 1892, ch. 251, 27 Stat. L. 270. The amendment consists in the addition of all matter following the first proviso.

SEC. 3. [Time to file homestead application and perfect entry — effect of marriage of entrywoman.] That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States land-office as is now allowed to settlers under the pre-emption laws to put their claims on record, and his right shall relate back to the date of settlement, the same as if he settled under the pre-emption laws.

Where an unmarried woman who has heretofore settled, or may hereafter settle, upon a tract of public land, improved, established, and maintained a bona fide residence thereon, with the intention of appropriating the same for a home, subject to the homestead law, and has married, or shall hereafter marry, before making entry of said land, or before making application to enter said land, she shall not on account of her marriage forfeit her right to make entry and receive patent for the land: *Provided*, That she does not abandon her residence on said land, and is otherwise qualified to make homestead entry: *Provided further*, That the man whom she marries is not, at the time of their marriage, claiming a separate tract of land under the homestead law. That this Act shall be applicable to all unpatented lands claimed by such entrywoman at the date of passage. [21 Stat. L. 141, 31 Stat. L. 683.]

This section was amended by the Act of June 6, 1900, ch. 821, 31 Stat. L. 683, by the addition of all that portion of the section commencing with the words "Where an unmarried woman," etc., to the end of the section as above given.

The purpose of this act is to permit an inceptive right to be obtained under the homestead law in a manner other than by filing an entry for the land. *Sproat v. Durland*, (1894) 2 Okla. 24.

Intervening claims defeated by relation. — Under the provisions of this section the ruling of the land department has been that if the homestead settler shall fully comply with the law as to continuous residence and cultivation, the settlement defeats all claims intervening between its date and the date of the filing of the homestead entry; and in making final proof, the entryman's five years of residence and cultivation will commence from the date of actual settlement. Hence, a homestead entryman's riparian rights in a stream running across the land homesteaded, attach from the date of his settlement, provided he complies with the law and obtains a patent for the land, and when such patent is issued it relates back to the date of the settlement so as to cut off adverse claims of a right to divert the water arising between the date of settlement and the issuance of the patent. *Sturr v. Beck*, (1890) 133 U. S. 541; *Faull v. Cooke*, (1890) 19 Oregon 455.

Relation back of contestant's rights. — "A contestant for a preference right has no right under the law to occupy the land as against the entryman, but when the entry is canceled as the result of his contest and the preference right is awarded under the Act of Congress of May 14, 1890, his rights relate back to the initiation of his contest, and no settlement made on the land or contest initiated subsequent to the initiation of his contest can defeat his right to enter the land or take from him the right to possession, if he follows up his right and makes the homestead entry within the time allowed by law." *Reaves v. Oliver*, (1895) 3 Okla. 62.

Respective rights of entryman and mere settler. — Where a person settled on a tract of land under the provisions of this Act and subsequently another person made a homestead entry at the local land office of said tract of land, and thereafter the settler, in the absence of the district judge, obtained of the county probate judge an order restraining the entryman from settling on and improving the land in dispute, whereupon the entryman filed a motion in the District Court to dissolve the temporary restraining order issued by the probate judge, and such motion was allowed and the restraining order dissolved, it was held that it was not error to dissolve such restraining order, for the reason that the entryman had a right to the joint use and occupancy of the land until such time

as the land department should determine which of the contestants was entitled under the homestead law to the land in dispute. *Littlefield v. Todd*, (1895) 3 Okla. 1.

Act applies only to land included in public domain.—The only settlers upon whom this section confers any rights are settlers "upon any of the public lands of the United States." Hence, where a person, after certain land had been granted by the United States to a state, did acts that would have amounted to a settlement if the land had been open to settlement, but after the land was restored to the public domain he did nothing which amounted to a settlement, it was held that he could take no benefit under the provisions of this Act, as the land was not part of the

public domain at the time of its attempted settlement. *Edwards v. Begole*, (C. C. A. 1903) 121 Fed. Rep. 1.

Land withdrawn before passage of Act.—The mere occupation of the public land for the purpose of subsequently entering the same as a homestead, but without actually making such entry until after the lands are withdrawn from entry by order of the secretary of the interior, gives the occupant no right to obtain the title under the provisions of this section after such withdrawal, where the withdrawal was made before the passage of this section. *Maddox v. Burnham*, (1895) 156 U. S. 544; *Northern Pac. R. Co. v. Nelson*, (1900) 22 Wash. 521.

An act to provide for issuing patents for public lands claimed under the pre-emption and homestead laws in cases where the claimants have become insane.

[*Act of June 8, 1880, ch. 136, 21 Stat. L. 166.*]

[*Perfection of claims of settlers becoming insane.*] That in all cases in which parties who regularly initiated claims to public lands as settlers thereon according to the provisions of the pre-emption or homestead laws, have become insane or shall hereafter become insane before the expiration of the time during which their residence, cultivation, or improvement of the land claimed by them is required by law to be continued in order to entitle them to make the proper proof and perfect their claims, it shall be lawful for the required proof and payment to be made for their benefit by any person who may be legally authorized to act for them during their disability, and thereupon their claims shall be confirmed and patented, provided it shall be shown by proof satisfactory to the Commissioner of the General Land Office that the parties complied in good faith with the legal requirements up to the time of their becoming insane, and the requirement in homestead entries of an affidavit of allegiance by the applicant in certain cases as a prerequisite to the issuing of the patents shall be dispensed with so far as regards such insane parties. [21 Stat. L. 166.]

The pre-emption laws were repealed by Act of March 3, 1891, ch. 561, sec. 4, *supra*, p. 285.

An act for the relief of homestead settlers in Wisconsin, Minnesota, and Michigan.

[*Act of Jan. 19, 1895, ch. 34, 28 Stat. L. 634.*]

[*Preamble — destruction by forest fires.*] Whereas during the summer and autumn of eighteen hundred and ninety-four extensive forest fires prevailed in northern Wisconsin, Minnesota, and Michigan, resulting in the death of many homesteaders and their families, the destruction of their property and effects, and of much of the green timber growing upon them, which homesteads are valuable chiefly for the timber standing and growing on them; and

Whereas under existing law homesteaders are not allowed to cut or sell green or burned timber, except for the purpose of clearing and improving, and all burned timber not cut within a short period will become worthless and a loss to the settler and the Government: Therefore,

[SEC. 1.] [*Time for final proof extended in certain burnt districts.*] That all such persons actually occupying homesteads in said States of Wisconsin, Minnesota, and Michigan at the time of such fires, upon claims under the laws

of the United States, on lands of the United States, whose property and buildings were destroyed by such fires, and the heirs of all such persons who perished by such fires, and all persons who by reason of such fires and loss of property were obliged to leave their homesteads, are hereby granted two years' additional time in which to make final proof. And temporary absence for any period within two years from the date of this Act shall be deemed constructive possession and residence, but shall not be deducted from the time required to make final proof. [28 Stat. L. 634.]

SEC. 2. [*Patents when property burned, etc.*] That all persons whose property was destroyed by such fires, and the heirs of all persons who were actual occupants of the homesteads at the time of the fire, and who lost their lives in and by that fire, may, by proving such actual occupancy at the date of such fires, make proof showing compliance with the law up to the date of the fire, and shall make payment at the minimum price under existing statutes, in the same manner as if such claimants were alive, and upon receipt of such proof of loss of property by such fires, or death of the claimant, heirs surviving, and upon payment as aforesaid, a patent shall be issued to such claimant, or his or her heirs. [28 Stat. L. 635.]

SEC. 3. [*License to cut burned timber — patents.*] That the claimant upon any homestead, who by reason of not having lived thereon the necessary length of time to enable him to commute under section twenty-three hundred and one of the Revised Statutes as amended by the Act of March third, eighteen hundred and ninety-one, his heirs, executor, administrator, or guardian of his minor heirs, may, when the quantity of timber destroyed upon his or her homestead shall not exceed seventy-five thousand feet of merchantable green timber, file an estimate in the land office where such homestead was entered with such reasonable proofs as the Commissioner of Public Lands may prescribe, as to the quantity of timber destroyed upon any sectional subdivision, and thereupon the register and receiver may, under the direction of the Commissioner of Public Lands, issue a license or permit to cut the burned timber on any homestead or sectional fraction thereof, upon payment of the sum of one dollar and twenty-five cents per acre for such sectional subdivision, and the Government shall issue a patent for the same to the claimant or his or her heirs. [28 Stat. L. 635.]

Sec. 2292. [*When rights inure to the benefit of infant children.*] In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose, and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office-fees and sum of money above specified. [R. S.]

Act of June 21, 1866, ch. 127, 14 Stat. L. 67.
Application to Greer county, Oklahoma.
— See *infra*, div. XIII.

Adult children take equally with minors.
— This section must be construed in connection with section 2291 so as to give effect to both if possible. Hence, if an entryman, after the death of his wife, dies intestate leaving adult and minor children, the land covered

by the homestead entry vests in all his children equally, the adult as well as the minor, as the object of the two sections is to provide a method of completing the homestead claim and obtaining a patent therefor and not to establish a line of descent or rule of distribution of the deceased entryman's estate. The purpose of section 2292 is to give to infant children the benefit of the

homestead entry and to relieve them, because of their infancy, from the necessity of proving the conditions required by section 2291 when there are only adults or adults and minors, and to allow a sale of the land within a prescribed period for the benefit of such infant children. *Bernier v. Bernier*, (1893) 147 U. S. 242; *Holloman v. Bullock*, (1903) 82 Miss. 405; *Cranab v. Hambleton*, (1885) 86 Mo. 501. *Contra*, *Bernier v. Bernier*, (1888) 72 Mich. 43.

"Minors" equivalent to "children under twenty-one years." — A patent issued by the land office after the death of the father and the mother, granting the land entered to "the minor heirs" of the father, passes the title to the children under twenty-one years of age, though by the law of the state where the land is situated some of such children are not minors. *Anderson v. Peterson*, (1887) 36 Minn. 547.

Sec. 2293. [*Persons in military or naval service, when and before whom to make affidavit.*] In case of any person desirous of availing himself of the benefits of this chapter; but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land-office which the preceding sections require; and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona-fide improvement and settlement have been made, such person may make the affidavit required by law before the officer commanding in the branch of the service in which the party is engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the application and affidavit are accompanied by the fee and commissions as required by law. [R. S.]

Act of March 21, 1864, ch. 38, 13 Stat. L. 35.

Sec. 2294. [*Officers before whom affidavits, etc., may be made — penalty for false swearing — fees.*] That hereafter all affidavits, proofs, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone Acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising federal jurisdiction in the territory or before the judge or clerk of any court of record in the land district in which the lands are situated: *Provided*, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register or receiver, shall be as follows:

For each affidavit, twenty-five cents.

For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

For each deposition of claimant or witness, prepared by the officer, one dollar.

Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars. [R. S.]

This section was amended to read as above by the Act of March 11, 1902, ch. 182, 32 Stat. L. 63.

The section originally read as follows:

"SEC. 2294. [*When persons may make affidavit before clerk of court.*] In any case in which the applicant for the benefit of the homestead, and whose family or some member thereof, is residing on the land which he desires to enter, and upon which a bona-fide improvement and settlement have been made, is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land-office, it may be lawful for him to make the affidavit required by law before the clerk of the court for the county in which the applicant is an actual resident, and to transmit the same, with the fee and commissions, to the register and receiver." Act of March 21, 1864, ch. 38, 13 Stat. L. 35.

It was first amended by the Act of May 26, 1890, ch. 355, 26 Stat. L. 121, to read as follows:

"SEC. 2294. In any case in which the applicant for the benefit of the homestead, pre-emption, timber culture, or desert land law is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land office, he or she may make the affidavit required by law before any commissioner of the United States circuit court or the clerk of a court of record for the county in which the land is situated, and transmit the same, with the fee and commissions to the register and receiver. That the proof of settlement, residence, occupation, cultivation, irrigation, or reclamation, the affidavit of non-alienation, the oath of allegiance, and all other affidavits required to be made under the homestead, pre-emption, timber culture, and desert land laws, may be made before any commissioner of the United States circuit court, or before the judge or clerk of any court of record of the county or parish in which the lands are situated; and the proof, affidavit, and oath, when so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them, with the fee and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall know-

ingly, willfully, and corruptly swear falsely to any material matter contained in said proofs, affidavits, or oath, he shall be deemed guilty of perjury, and shall be liable to the same pains and penalty as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver shall be as follows:

"For each affidavit, twenty-five cents.

"For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

"For each deposition of claimant or witness prepared by the officer one dollar.

"Any officer demanding or receiving a greater sum for such services shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by a fine not exceeding one hundred dollars."

It was again amended as above stated to read as given in the text.

The pre-emption and timber culture laws were repealed by Act of March 3, 1891, ch. 561, secs. 1, 4. See *supra*, p. 285, and *infra*, div. XVII.

False oath as to excusatory facts is perjury.—"The Act of March 21, 1864, permitting an applicant to make his affidavit for a homestead entry in a certain contingency, before a clerk, by a necessary implication requires such applicant, before he can avail himself of such privilege, to show by oath that such contingency exists; and that the clerk may, as incidental to his power to take the affidavit, administer such oath. The matter is also material, for on the existence of the excusatory facts depends the power of the clerk to administer the oath to the affidavit, and the right of the applicant to take the same before him, and use it in the land office." Hence, the wilful making of a false affidavit as to such excusatory facts is perjury. U. S. v. Hearing, (1886) 26 Fed. Rep. 744.

Perjury offense against United States, not against state.—When a clerk of a court administers the oath to an affidavit under the provisions of this section, he acts by virtue of the authority conferred by this statute and not under any state law. If the oath is wilfully false, it is an offense against the United States and not against the state. State v. Kirkpatrick, (1877) 32 Ark. 117.

An act to legalize entries of public lands under the homestead laws in certain cases.

[Act of June 22, 1874, ch. 394, 18 Stat. L. 192.]

[*Entries on affidavits made prior to settlement and improvement legalized.*]

That in all cases of entries of public lands heretofore made under the act entitled "An act to secure homesteads to actual settlers on the public domain,"

approved May twentieth, eighteen hundred and sixty-two, where the affidavit required by section two of said act was made before the clerk of the county of the residence of the person making the entry, without having first made the settlement and improvement required by the provisions of section three of the act entitled "An act amendatory of the homestead law, and for other purposes," approved March twenty-first, eighteen hundred and sixty-four, said affidavits be, and the same are hereby, legalized and confirmed, so as to have the same force and validity as if the provisions of said last-named act had been strictly complied with: *Provided*, That nothing in this act shall have the effect or be construed to impair the valid and paramount adverse rights of any person or corporation to any of such lands, except in so far as the right of Congress to protect the claims or rights of homestead settlers upon lands within the limits of grants of lands to any railroad company may have been reserved in the acts making such grants and be now lawfully existing. [18 Stat. L. 192.]

Acts of May 20, 1862, ch. 75, sec. 2, and March 21, 1864, ch. 38, sec. 3, were incorporated into Revised Statutes as sections 2290 and 2294, respectively.

An act to provide for the validation of affidavits made before United States Commissioners in all land entries.

[Act of Aug. 4, 1894, ch. 211, 28 Stat. L. 227.]

[SEC. 1.] [*Validation of entries on unauthorized affidavits.*] That all entries under the homestead, pre-emption, timber-culture, or desert-land law made between May twenty-sixth, eighteen hundred and ninety, and the date of approval of this Act, and which are based on affidavits made before a United States court commissioner, instead of a United States circuit court commissioner, as provided by the Act of May twenty-sixth, eighteen hundred and ninety (twenty-sixth Statute, one hundred and twenty-one), are hereby validated, if no other objection exists; and all final proofs on entries of the classes mentioned made before a United States court commissioner, not a United States circuit court commissioner, between the dates aforesaid will be adjudicated in the same manner as if said proofs were made before an officer authorized by law to take such testimony. [28 Stat. L. 227.]

The Act of May 26, 1890, mentioned in the text is the provision amending R. S. sec. 2294, set out in the note to that section, *supra*, p. 305.

SEC. 2. [*Entries on affidavits validated, if according to official regulations.*] That all entries under the homestead, pre-emption, timber-culture, or desert-land law, based on affidavits made before any officer authorized to administer oaths in the State or Territory in which such entries were made, and where such affidavits were made in accordance with the regulations and decisions of the General Land Office prior to the passage of the Act of May twenty-sixth, eighteen hundred and ninety, are hereby validated, if no other objection exists. [28 Stat. L. 227.]

See note to section 1, *supra*.

Sec. 2295. [*Record of applications.*] The register of the land-office shall note all applications under the provisions of this chapter, on the tract-books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded. [R. S.]

Act of May 20, 1862, ch. 75, 12 Stat. L. 393.

Sec. 2296. [*Homestead lands not to be subject to prior debts.*] No lands required under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor. [R. S.]

Act of May 20, 1862, ch. 75, 12 Stat. L. 393. Homestead not granted for creditors' benefit. — "Lands acquired under the Homestead Act of Congress are granted for the benefit of the grantee and his family and not for the benefit of antecedent creditors." *Lewton v. Hower*, (1882) 18 Fla. 872.

Constitutionality of exemption. — The exemption of homesteads acquired under this statute from sale for debts antecedent to the patent is constitutional and valid, and does not violate the sovereignty of the state. *Seymour v. Sanders*, (1874) 3 Dill. (U. S.) 437, 21 Fed. Cas. No. 12,690; *Lewton v. Hower*, (1882) 18 Fla. 872; *Russell v. Lowth*, (1874) 21 Minn. 167; *Gile v. Hallock*, (1873) 33 Wis. 523. And see *Sorrels v. Self*, (1884) 43 Ark. 451.

State legislation cannot interfere with the exemption of land acquired under the homestead laws of the United States from sale for indebtedness incurred by the patentee prior to the issuance of the patent, nor can such legislation embarrass the exercise by the patentee of the right of such exemption. *Seymour v. Sanders*, (1874) 3 Dill. (U. S.) 437, 21 Fed. Cas. No. 12,690; *Russell v. Lowth*, (1874) 21 Minn. 167.

Homestead land is exempt from sale under an attachment or execution issued on a judgment against the entryman for debts contracted by him before the issuance of the patent. *Smith v. Schmitz*, (1880) 10 Neb. 600; *Baldwin v. Boyd*, (1885) 18 Neb. 444; *Brandhoefer v. Bain*, (1895) 45 Neb. 781; *Duell v. Potter*, (1897) 51 Neb. 241; *Jackett v. Bower*, (1901) 62 Neb. 232; *Clark v. Bayley*, (1874) 5 Oregon 343; *Faull v. Cooke*, (1890) 19 Oregon 455. And if the land is sold under such an execution, the purchaser acquires no title. *Dickerson v. Bridges*, (1898) 147 Mo. 235; *Dickerson v. Cuthbuth*, (1894) 56 Mo. App. 647.

Exemption from execution of judgment recovered before homestead entry. — Where, after entering land as a homestead, the entryman made final proof as a pre-emption entry, but occupied the land as a homestead and caused the word "homestead" to be written on the margin of the receiver's final receipt, it was held that it was exempt from execution issued after such final receipt on a judgment rendered before the issuance of the final receipt, as it had not been subjected specifically to a judgment lien by the levy of an execution before it was homesteaded. *Weare v. Johnson*, (1894) 20 Colo. 363.

Judgment after patent on antecedent debt. — Land entered as a homestead is exempt from sale under an execution based on a judgment for a debt contracted by the entryman prior to the issuance of the patent, notwithstanding the fact that the debt was reduced to judgment after the patent was issued. *Miller v. Little*, (1874) 47 Cal. 348.

Exemption in bankruptcy proceedings. —

The title to land entered as a homestead does not vest in the trustee in bankruptcy when the entryman becomes a bankrupt so as to become liable for debts contracted prior to the issuance of the patent, as it cannot be held that Congress intended to modify the homestead law by the Bankruptcy Act. *In re Daubner*, (1899) 96 Fed. Rep. 805.

No lien can be acquired in any manner on land entered under the homestead laws, to secure a debt contracted before the patent therefor is issued. *Shorman v. Eakin*, (1886) 47 Ark. 351.

Lien for costs of criminal prosecution. — Where the statute of a state provided that in case of the commission or attempt to commit a felony, the state should have a lien from the time of such commission or attempt, on all the property of the defendant for the costs of the proceedings brought against him for such crime, it was held that the lien did not attach to the homestead of an entryman who committed a crime prior to the issuance of a patent for the land homesteaded, and who was convicted after the issuance of the patent, as the title to the land was in the United States at the time the crime was committed. The court, however, expressly refrained from deciding what was the effect on the land of the judgment for costs rendered against the defendant after the issuance of the patent, as the question was not before it. *State v. O'Neil*, 7 Oregon 141.

Sale of house to enforce mechanic's lien. — The sale of a house located on a homestead, for the purpose of enforcing a mechanic's lien, and the removal of such house from the land homesteaded, do not in any way conflict with the provisions of this section. *Mahon v. Surerus*, (1899) 9 N. Dak. 57.

And one who has placed machinery upon land entered as a homestead, the patent for which has not been issued, may claim a lien on the machinery itself if its removal will not materially impair the realty, but he cannot claim a lien on the land. *Paige v. Peters*, (1887) 70 Wis. 178.

But where the statute authorizing a mechanic's lien provides that it shall attach only to the real estate and not to the personal property, the lien cannot attach to land for which the entryman has received no patent and is not entitled to receive a patent, the title to the land being in the United States. *Kansas Lumber Co. v. Jones*, (1884) 32 Kan. 195.

Meaning of the words "debts contracted." — The words "debts contracted" do not necessarily mean debts or obligations incurred by an agreement of the parties. The word "contract" has a more extensive significance than to make an agreement. In the ordinary acceptance of the term, "debts contracted" will include liabilities incurred. *State v. O'Neil*, 7 Oregon 141.

Liability for entryman's torts.—The exemption of this section covers the entryman's liability for tort growing out of a breach of a contract warranting the title to certain personal property sold by him. *Flanagan v. Forsythe*, (1897) 6 Okla. 225.

Note executed after patent for antecedent debt.—Land acquired by homestead entry is not liable to the satisfaction of a debt contracted prior to the issuance of the patent therefor, notwithstanding the fact that the debt is evidenced by a promissory note executed after the issuance of the patent, and if the homestead land is sold under an execution on a judgment recovered on such a note the entryman may recover possession of the land from the purchaser at the execution sale. *Wallowa Nat. Bank v. Riley*, (1896) 29 Oregon 289; *Schultz v. Levy*, (1898) 33 Oregon 373.

What is not antecedent debt.—Lands acquired under the homestead laws of the United States are not exempt from execution in satisfaction of a claim for contribution among cosureties, though the principal obligation was incurred prior to the issuance of the patent, if the payment by one of the cosureties upon which the claim of contribution is founded was not made until after the issuance of the patent. Prior to such payment no right of action existed, but only an equity which sprung up at the time the relation of cosureties was created and which did not ripen into a cause of action until the payment was actually made. The equity which theretofore existed cannot be held to be a debt contracted prior to the issuance of the patent within the meaning of this section. *Shoemaker v. Stimson*, (1896) 16 Wash. 1.

Debts incurred after final certificate but before patent.—It has been held that the land entered as a homestead may be subjected to the satisfaction of debts incurred by the entryman after the issuance of the receiver's final certificate but before the issuance of the patent, for the reason that the final certificate is as binding on the government as the patent, and when the patent issues it relates back to the date of the final certificate. *Struby-Estabrook Mercantile Co. v. Davis*, (1892) 18 Colo. 93; *Leonard v. Ross*, (1880) 23 Kan. 292; *Flanagan v. Forsythe*, (1897) 6 Okla. 225.

Possibly the better opinion is that the land cannot be subjected to the satisfaction of such debts, as this section in plain terms provides that the land shall not "in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor." And this, too, notwithstanding the fact that upon receiving final certificate the entryman has a perfect equitable title to the land which he may convey, and that when the patent issues it relates back to the final certificate, as the condition or existence of the equitable title is not made the test of liability for antecedent debts. *Barnard v. Boller*, (1894) 105 Cal. 214; *Wallowa Nat. Bank v. Riley*, (1896) 29 Oregon 289. See also *Miller v. Little*, (1874) 47 Cal. 348; *Jean v. Dee*, (1893) 5 Wash. 580.

Exemption when entryman ceases to reside

on land.—The exemption of the land homesteaded for the debts of the entryman incurred prior to the issuance of the patent, continues though the entryman after issuance of the patent ceases to occupy the land as a homestead, for the reason that the homestead laws impose no obligation on the entryman to occupy the land after the issuance of the patent. *Jean v. Dee*, (1893) 5 Wash. 580.

Right to mortgage before issuance of patent.—Provided he acts in good faith and not for the purpose of evading the prohibition of R. S. sec. 2291, against alienation, the entryman may, after making final proof and receiving the final certificate but before the issuance of the patent, execute a valid mortgage on the land homesteaded, as this section does not limit his right to fix a lien on the land by his own act, but simply protects him from compulsory payment of pre-existing debts.

Alabama.—*Smart v. Kennedy*, (1898) 123 Ala. 627.

Arkansas.—*Gilkerson-Sloss Co. v. Forbes*, (1891) 54 Ark. 148.

California.—*Orr v. Stewart*, (1885) 67 Cal. 275; *Klempp v. Northrop*, (1902) 137 Cal. 414.

Minnesota.—*Lewis v. Wetherell*, (1887) 36 Minn. 386.

Missouri.—*Dickerson v. Bridges*, (1898) 147 Mo. 235; *Dickerson v. Cuthburth*, (1894) 56 Mo. App. 647.

Nebraska.—*Cheney v. White*, (1876) 5 Neb. 261; *Jones v. Yoakam*, 1876) 5 Neb. 265.

Oklahoma.—*Fariss v. Deeming Invest. Co.*, (1897) 5 Okla. 496; *Stark v. Duvall*, (1898) 7 Okla. 213.

Oregon.—*Howard v. Reckling*, (1897) 31 Oregon 161.

Washington.—*Boggan v. Reid*, (1889) 1 Wash. 514; *Weber v. Laidler*, (1901) 26 Wash. 144; *Towner v. Rodegeb*, (1903) 33 Wash. 153.

Wisconsin.—*Meinhold v. Walters*, (1899) 102 Wis. 389.

Even if the mortgage is executed before the making of final proof and the issuance of final certificate, it is valid. *Fuller v. Hunt*, (1878) 48 Iowa 163; *Lang v. Morey*, (1889) 40 Minn. 396; *Forgy v. Merryman*, (1883) 14 Neb. 513; *Orr v. Ulyatt*, (1896) 23 Nev. 134; *Spieess v. Neuberg*, (1888) 71 Wis. 279.

And it seems that if one who is in possession of public lands mortgages them in fee, and afterwards acquires a title to the same under the homestead laws, he is estopped from denying the lien of the mortgage or setting up the title afterwards voluntarily acquired for the purpose of defeating it. *Weber v. Laidler*, (1901) 26 Wash. 144; *Kirkaldie v. Larrabee*, (1866) 31 Cal. 456.

But it has been held that where the entryman after making the entry executes a mortgage on the land entered and subsequently dies before making the final proof required by the statute, the mortgage is ineffectual to create a valid lien as against his heirs at law, who perfect the entry, make the required final proof of settlement and cultivation, and obtain from the government a patent to the

land included in and acquired by such entry. *Marley v. Sturkert*, (1901) 62 Neb. 163.

Mortgage executed by entryman before entry.—Where a person after filing an application for a pre-emption of certain public land and executing a mortgage thereon filed a voluntary relinquishment of his pre-emption claim and immediately thereafter made an application for homestead entry of the same land, it was held that the two proceedings were entirely distinct and that the mortgage did not attach to the homestead entry. At the time of the execution of the mortgage the entryman had no vested right, but merely an inchoate undetermined claim liable to be defeated by his own act or that of the government if he did not carry out the provisions of the law, and the mortgagee took the mortgage with notice of the entryman's title and rights. *Hebert v. Brown*, (1895) 65 Fed. Rep. 2.

Priority of mortgages.—Where the entryman executes a mortgage on the land entered before issuance of a patent, and the mortgage is recorded the same day, the lien thereon is superior to the lien of a mortgage executed by the entryman after he has commuted his homestead entry into a cash entry and received his final receipt. *Dickerson v. Bridges*, (1898) 147 Mo. 235.

Estoppel of entryman to repudiate mortgage.—This section is a protection to the homesteader and not a limitation upon his right to borrow money on the land secured by a mortgage, and the homesteader cannot after executing the mortgage deny its validity under the provisions of this section. *Stark v. Duvall*, (1898) 7 Okla. 213.

Mortgage to procure money for commutation.—Where the entryman after filing his final affidavits in the proper land office, showing his settlement, residence, improvement, and nonalienation of the land, and also his affidavit of his right to commute the homestead to a cash entry, executes a mortgage on the land to procure money to pay the commutation price, the mortgage so executed is valid. *McFall v. Murray*, (1896) 4 Kan. App. 554. And see *infra*, R. S. 2301.

Exemption in hands of bona fide purchaser.—The terms of this section clearly exempt all lands obtained under the acts of which it is a part from liability for any of the debts of the entryman incurred prior to the issuance of the patent, whether the lands are still held by him or by a bona fide purchaser deriving title from him. *Russell v. Lowth*, (1874) 21 Minn. 167; *Dickerson v. Cuthburth*, (1894) 56 Mo. App. 647; *Smith v. Steele*, (1882) 13 Neb. 1; *Baldwin v. Boyd*, (1885) 18 Neb. 444; *Clark v. Bayley*, (1874) 5 Oregon 343.

But "manifestly the provision under consideration was intended as a protection to the homestead settler, the patentee, and not to exempt the land acquired under the law from the payment of the debts of a subsequent owner, although incurred prior to the date of the patent." *Duell v. Potter*, (1897) 51 Neb. 241.

Exemption when patentee re-acquires land after sale thereof.—Where a homestead en-

tryman, after receiving his patent, conveyed the land to another and subsequently re-acquired title thereto, it was held that the land was exempt from liability for debts incurred by him prior to the issuance of the patent. The court said: "Our conclusion is that a particular tract of land acquired under the federal Homestead Law is forever exempt from liability for the debts of the patentee, created before patent issued, and this, without regard to whether he remains the owner or regains the ownership." *Brandhoefer v. Bain*, (1895) 45 Neb. 781, followed in *Van Doren v. Miller*, (1901) 14 S. Dak. 264. *Contra*, *De Lany v. Knapp*, (1896) 111 Cal. 165, which, after holding that the patentee when he subsequently acquired title to the homestead took it divested of its exemption, also held that the title of a bona fide purchaser for value and without notice at the execution sale, made after the reconveyance, was not affected by a secret trust impressed on the property by the entryman at the time he transferred the homestead, the transfer having been made for the purpose of placing the property beyond the reach of his creditors.

Exemption in hands of devisee.—When a homestead entryman dies before acquiring title to the land entered and after having devised it, the devisee, upon perfecting his title pursuant to U. S. R. S. 2291, acquires the land exempt from liability for the entryman's debts under the provisions of this section. *Coleman v. McCormick*, (1887) 37 Minn. 179.

Exemption in the hands of widow or heirs.—When an entryman dies before issuance of the patent, his widow or heirs have the right to acquire title to the homestead and hold the land free from the claims of the creditors of the original entryman. *Sorrels v. Self*, (1884) 43 Ark. 451. And see *Towner v. Rodegeb*, (1903) 33 Wash. 153.

Exemption of inchoate homestead right—sale by administrator.—Where the entryman died intestate before issuance of a patent, and his administrator sold the land for the purpose of paying the debts of the estate and expenses of the administration, the court, in holding that the sale was void, said: "If the homestead itself, with title acquired, cannot be subjected to liability for debts contracted before the issuance of patent, it would seem to follow with equal force that the homesteader's mere right to possession of land, not even entered, together with his improvements thereon, is likewise exempt from such liability. If execution for debts contracted before patent cannot be enforced against a homestead, either acquired or inchoate, it follows that such debts cannot be enforced against it by the processes of administration, as was attempted to be done in this case. If the improvements and right of possession of the settler when living cannot be sold to satisfy his debts, the mere fact of death does not change the principle." *Towner v. Rodegeb*, (1903) 33 Wash. 153.

Collateral attack of administrator's sale for antecedent debts.—Notwithstanding the exemption granted by this section, a judgment

of a probate court ordering the administrator to sell land entered as a homestead by the deceased for the payment of debts contracted prior to the issuance of the patent therefor cannot be attacked collaterally, unless the fact that such debts antedate the

patent appears in the record of the probate court's proceedings. Such a judgment can be reviewed only on appeal or other direct proceeding. *J. B. Watkins Land Mortg. Co. v. Mullen*, (1900) 62 Kan. 1.

Sec. 2297. [*When lands entered for homestead revert to Government.*] If, at any time after the filing of the affidavit, as required in section twenty-two hundred and ninety, and before the expiration of the five years mentioned in section twenty-two hundred and ninety-one, it is proved, after due notice to the settler, to the satisfaction of the register of the land-office, that the person having filed such affidavit has actually changed his residence, or abandoned the land for more than six months at any time, then and in that event the land so entered shall revert to the Government. *Provided*, That where there may be climatic reasons the Commissioner of the General Land Office may, in his discretion, allow the settler twelve months from the date of filing in which to commence his residence on said land under such rules and regulations as he may prescribe. [*R. S.*]

Act of May 20, 1862, ch. 75, 12 Stat. L. 393.

This section was amended by the Act of March 3, 1881, ch. 153, 21 Stat. L. 511, by adding the proviso as set forth in the text.

Jurisdiction of land department over contests.—The general power of the United States land department to determine all contests arising under the statutes granting rights to acquire title to the public lands of the United States, is sufficient to give the land department jurisdiction of contests arising under the provisions of the Forfeiture Act of Sept. 29, 1890, securing a preference right of purchase to licensees from the state or corporation to which the land had been granted, or to settlers upon such land, notwithstanding the fact that the causes of contest prescribed by this section do not include those based on such preferential right. *Wiseman v. Eastman*, (1899) 21 Wash. 163.

And the failure of the register of a land office on a cancellation of a homestead entry under this section to find affirmatively that the entryman had abandoned his claim for six months would not affect his jurisdiction to forfeit and cancel the entry for other causes. *Lawrence v. Potter*, (1900) 22 Wash. 32.

Regulation requiring contests to be heard before register and receiver.—The rule of the land department requiring contests to be heard before the register and the receiver of the local land office, made under authority of the supervisory powers in public land matters given by statute to the secretary of the interior, which rule has been acquiesced in and become the settled practice of the department, must be held by the courts as in aid of this section, which names the register alone as the tribunal before whom such hearing shall be had, inasmuch as there is nothing in the rule prejudicial to contestants, since the contest is reviewable on appeal to higher divisions of the department. *Lawrence v. Potter*, (1900) 22 Wash. 32.

Even if the action of the register and receiver of a land office in deciding a contest may have been so far in derogation of this section as to be irregular, a contestant complaining thereof is estopped to raise the objection in the courts when he has failed to raise the point before the local land office, the commissioner of public lands, or the secretary of the interior. *Carr v. Fife*, (1895) 156 U. S. 494; *Lawrence v. Potter*, (1900) 22 Wash. 32.

Voluntary relinquishment by entryman.—Notwithstanding the fact that this section provides for a contest, an entryman could relinquish his entry prior to the passage of the Act of May 14, 1880 (21 U. S. Stat. L. 140). There could have been no higher or more convincing evidence of abandonment of the entry than the testimony of the entryman himself by a formal relinquishment of his rights to the land indorsed on his original receipt and filed in the land office. After such proof of abandonment, it would have been a useless form to have required a contest to prove the very thing that was admitted and asserted by the original entryman. *Keane v. Brygger*, (1895) 160 U. S. 276; *Keane v. Brygger*, (1891) 3 Wash. 338. And see *supra*, note to Act of May 14, 1880, 21 U. S. Stat. L. 140, which is set out under R. S. 2291, *supra*, p. 300.

Recovery of sum paid for entry.—It is not within the discretion of a person to enter land under the homestead laws and at pleasure relinquish it without completing the transaction, as the obligation is not unilateral in its character, but is binding on the entryman as well as on the government. Hence, where the entryman, after properly entering a homestead, voluntarily relinquishes his rights, he has no cause of action for the sum paid to initiate the entry, even though such sum includes the purchase price of the excess over one hundred and sixty acres contained in a technical quarter section entered by him. *Tietin v. U. S.* (1900) 36 Ct. Cl. 1, and see *supra*, note R. S. 2289, p. 286.

An act for the relief of settlers on the public lands in districts subject to grasshopper incursions.

[Act of July 1, 1879, ch. 63, 21 Stat. L. 48.]

[SEC. 1.] [*Leave of absence where crops injured by grasshoppers.*] That it shall be lawful for homestead and pre-emption settlers on the public lands, and in all cases where pre-emptions are authorized by law, where crops have been or may be destroyed or seriously injured by grasshoppers, to leave and be absent from said lands, under such rules and regulations, as to proof of the same, as the Commissioner of the General Land Office shall prescribe; but in no case shall such absence extend beyond one year continuously; and during such absence no adverse rights shall attach to said lands, such settlers being allowed to resume and perfect their settlement as though no such absence had occurred. [21 Stat. L. 48.]

See more extensive provisions of following Act.

Previous Acts permitting absence of settlers in specified years on account of injury by grasshoppers are as follows: Act of June 18, 1874, ch. 308, 18 Stat. L. 81; Act of Dec. 28, 1874, ch. 10, 18 Stat. L. 294;

Act of May 20, 1876, ch. 102, 19 Stat. L. 54; Act of June 19, 1876, ch. 134, 19 Stat. L. 59; Act of March 3, 1877, ch. 127, 19 Stat. L. 405; Act of June 1, 1878, ch. 148, 20 Stat. L. 88; Act of June 14, 1878, ch. 190, 20 Stat. L. 113.

SEC. 2. [*Time for making proof and payment may be extended.*] That the time for making final proof and payment by pre-emptors whose crops shall have been destroyed or injured as aforesaid, may, in the discretion of the Commissioner of the General Land Office, be extended for one year after the expiration of the term of absence provided for in the first section of this act; * * * [21 Stat. L. 48.]

The omitted portion of the section relates to settlers under the timber culture laws which were repealed by Act of March 3, 1891, ch. 561, sec. 1.

See more extensive provisions of Res. of Sept. 30, 1890, No. 59, *infra*, p. 311.

The pre-emption laws were repealed by Act of March 3, 1891, ch. 561, sec. 4, *supra*, p. 285.

SEC. 3. [*Leave of absence on account of failure of crops, sickness, or other unavoidable casualty.*] That whenever it shall be made to appear to the register and receiver of any public land office, under such regulations as the Secretary of the Interior may prescribe, that any settler upon the public domain under existing law is unable by reason of a total or partial destruction or failure of crops, sickness, or other unavoidable casualty, to secure a support for himself, herself, or those dependent upon him or her upon the lands settled upon, then such register and receiver may grant to such settler a leave of absence from the claim upon which he or she has filed for a period not exceeding one year at any one time, and such settler so granted leave of absence shall forfeit no rights by reason of such absence: *Provided*, That the time of such actual absence shall not be deducted from the actual residence required by law. That if any such settler has heretofore forfeited his or her entry for any of said reasons, such person shall be permitted to make entry of, not to exceed a quarter section on any public land subject to entry under the homestead law, and to perfect title to the same under the same conditions in every respect as if he had not made the former entry. [25 Stat. L. 854, 28 Stat. L. 599.]

This is from the Act of March 2, 1889, ch. 381, "An act to withdraw certain public lands from private entry, and for other purposes," as amended by the Act of Dec. 29,

1894, ch. 14. The amendatory act added the closing provision beginning with the words "That if any such settler has heretofore forfeited," etc.

Joint resolution to extend the time of payment to settlers on the public lands in certain cases.

[*Res. No. 59, of Sept. 30, 1890, 26 Stat. L. 684.*]

[*Extension of time for payments when prevented by failure of crops, etc.*] That whenever it shall appear by the filing of such evidence in the offices of any register and receiver as shall be prescribed by the Secretary of the Interior that any settler on the public lands, by reason of a failure of crops for which he is in no wise responsible, is unable to make the payment on his homestead or pre-emption claim required by law, the Commissioner of the General Land Office is hereby authorized to extend the time for such payment for not exceeding one year from the date when the same becomes due. [26 Stat. L. 684.]

An Act Granting leave of absence for one year to homestead settlers upon the Yankton Indian Reservation, in the State of South Dakota, and for other purposes.

[*Act of Feb. 26, 1896, ch. 31, 29 Stat. L. 16.*]

[SEC. 1.] [*Leave of absence to homesteaders on ceded Yankton Indian Reservation.*] That all settlers who made settlement under the homestead laws upon lands in the Yankton Indian Reservation, in the State of South Dakota, during the year eighteen hundred and ninety-five are hereby granted leave of absence from such homestead for one year from and after the date of this Act, and that by such absence such homestead settler shall not lose nor forfeit any right whatever: *Provided*, That the settler shall not receive credit upon the period of actual residence required by law for the time he is absent hereunder. [29 Stat. L. 16.]

SEC. 2. [*Notice to be filed.*] That any such homestead settler may avail himself of the benefits of this Act by filing a notice with the local land office describing his land and date of settlement thereon, which notice shall be signed by the settler and attested by the register of the land office. [29 Stat. L. 16.]

SEC. 3. [*Time of making final proof, etc., as to ceded lands extended.*] That the time for making final proof and payment for all lands located under the homestead laws of the United States upon any lands of any former Indian reservation in the State of South Dakota, be, and the same is hereby, extended for the period of one year from the time proof and payment would become due under existing laws. [29 Stat. L. 16.]

"The first two sections of this Act relate only to the Yankton Indian reservation, which was opened to settlement under the homestead and town-site laws by 1894, Aug. 15, ch. 290, sec. 12 (28 Stat. L. 314-319).

"The last section applies generally to 'any former Indian reservation in the state of South Dakota,' and would, therefore, embrace that portion of the great Sioux reservation lying within that state, and which was

opened to settlement by 1891, March 3, ch. 543, secs. 26-30 (26 Stat. L. 1035-1039). See proclamation of the President, 1892, April 11, Proc. No. 22 (27 Stat. L. 1017).

"By 1896, June 10, ch. 398, homestead settlers on all ceded Indian reservations are granted an extension of one year in which to make payments." *Compilers' note, 2 Supp. R. S. 448.*

[SEC. 1.] [*Time to make payments extended.*] * * * That the homestead settlers on all ceded Indian reservations be, and they are hereby, granted an extension of one year in which to make payments as now provided by law. * * * [29 Stat. L. 342.]

This is from the Indian Department Appropriation Act of June 10, 1896, ch. 398.

[SEC. 1.] [*Time to make payments extended.*] * * * That the settlers who purchased with the condition annexed of actual settlement on all ceded Indian reservations be, and they are hereby, granted an extension of one year, in addition to the extensions heretofore granted, in which to make payments as now provided by law. * * * [30 Stat. L. 87.]

This is from the Indian Department Appropriation Act of June 7, 1897, ch. 3. See further *Lands in Oklahoma*, div. XIII.

[SEC. 1.] [*Time to make payments extended.*] * * * That the settlers who purchased with the condition annexed of actual settlement on all ceded Indian reservations be, and they are hereby, granted an extension to July first, nineteen hundred and one, in which to make payments as now provided by law. * * * [31 Stat. L. 241.]

This is from the Indian Department Appropriation Act of May 31, 1900, ch. 598.

Sec. 2298. [*Limitation of amount entered for homestead.*] No person shall be permitted to acquire title to more than one quarter-section under the provisions of this chapter. [*R. S.*]

Act of May 20, 1862, ch. 75, 12 Stat. L. 393.

Estoppel of creditor to question homesteader's title.—Where a creditor sought to subject to the satisfaction of his debt land devised to his debtor by the entryman, it was held that he was estopped from claiming that the provisions of this section forbade the

debtor to acquire title to the land devised to him because of a previous exercise of the homestead right, as the creditor's claim to subject the land to his debt was based on the fact that the title was in his debtor. *Coleman v. McCormick*, (1887) 37 Minn. 179. And see *supra*, note R. S. 2296, p. 307.

[SEC. 1.] [*Acquirement of title under land laws limited to 320 acres.*] No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act: * * * [26 Stat. L. 391.]

This is from the Sundry Civil Appropriation Act of Aug. 30, 1890, ch. 837.

For further provisions of this Act, see div. XI.

See limitation in following section.

SEC. 17. [*Maximum land entries not to include mining claims.*] * * * And that the provision of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws. [26 Stat. L. 1101.]

This is from the Act of March 3, 1891, ch. 561, "An act to repeal timber-culture laws, and for other purposes."

An act to grant additional rights to homestead settlers on public lands within railroad limits.

[Act of March 3, 1879, ch. 191, 20 Stat. L. 472.]

[*Entries within limits of grants to or in aid of railroad or military road companies — additional entries.*] That from and after the passage of this act, the even sections within the limits of any grant of public lands to any railroad company, or to any military road company, or to any State in aid of any railroad or military road, shall be open to settlers under the homestead laws to the extent of one hundred and sixty acres to each settler, and any person who has, under existing laws, taken a homestead on any even section within the limits of any railroad or military road land-grant, and who, by existing laws shall have been restricted to eighty acres, may enter under the homestead laws an additional eighty acres adjoining the land embraced in his original entry, if such additional land be subject to entry; or if such person so elect, he may surrender his entry to the United States for cancellation, and thereupon be entitled to enter lands under the homestead laws the same as if the surrendered entry had not been made. And any person so making additional entry of eighty acres, or new entry after the surrender and cancellation of his original entry, shall be permitted so to do without payment of fees and commissions; and the residence and cultivation of such person upon and of the land embraced in his original entry shall be considered residence and cultivation for the same length of time upon and of the land embraced in his additional or new entry, and shall be deducted from the five years' residence and cultivation required by law: *Provided*, That in no case shall patent issue upon an additional or new homestead entry under this act until the person has actually, and in conformity with the homestead laws, occupied, resided upon, and cultivated the land embraced therein at least one year. [20 Stat. L. 472.]

An act to grant additional rights to homestead settlers on public lands within railroad limits in the States of Missouri and Arkansas.

[Act of July 1, 1879, ch. 60, 21 Stat. L. 46.]

[*Entries within limits of grants to or in aid of railroads in Missouri and Arkansas — additional entries.*] That from and after the passage of this act the odd sections within the limits of any grant of public lands to any railroad company in the States of Missouri and Arkansas, or to such States respectively, in aid of any railroad where the even sections have been granted to and received by any railroad company or by such States respectively in aid of any railroad shall be open to settlers under the homestead laws to the extent of one hundred and sixty acres to each settler; and any person who has under existing laws taken a homestead on any section within the limits of any railroad grant in said States, and who by existing laws shall have been restricted to eighty acres, may enter under the homestead laws an additional eighty acres adjoining the land embraced in his original entry, if such additional land be subject to entry; or if such person so select, he may surrender his entry to the United States for cancellation, and thereupon be entitled to enter lands under the homestead laws the same as if the surrendered entry had not been made. And any person so making additional entry of eighty acres, or new entry after the cancellation of his original entry, shall be permitted to do so without payment of fees or commissions; and the residence of such person upon and cultivation of the land embraced in his original entry shall be considered residence and cultivation for the same length of time upon

and of the land embraced in his additional or new entry, and shall be deducted from the five year's residence and cultivation required by law: *Provided*, That in no case shall patent issue upon an additional or new homestead entry under this act until the person has actually, and in conformity with the homestead laws, occupied, resided upon, and cultivated the land embraced therein at least one year. [21 Stat. L. 46.]

An act to protect homestead settlers within railway limits and for other purposes.

[Act of May 6, 1886, ch. 88, 24 Stat. L. 22.]

[*Patents for additional entries without further cost or proof.*] That all homestead settlers on public lands within the railway limits restricted to less than one hundred and sixty acres of land, who have heretofore made or may hereafter make the additional entry allowed either by the act approved March third, eighteen hundred and seventy-nine, or the act approved July first, eighteen hundred and seventy-nine, after having made final proof of settlement and cultivation under the original entry, shall be entitled to have the lands covered by the additional entry patented without any further cost or proof of settlement and cultivation. [24 Stat. L. 22.]

An act to withdraw certain public lands from private entry, and for other purposes.

[Act of March 2, 1889, ch. 381, 25 Stat. L. 854.]

[SEC. 1.] [*Withdrawal from private entry.* See p. 334.]

SEC. 2. [*Homestead entry after former unperfected entry — pre-emption entry changed to homestead entry.*] That any person who has not heretofore perfected title to a tract of land of which he has made entry under the homestead law, may make a homestead entry of not exceeding one-quarter section of public land subject to such entry, such previous filing or entry to the contrary notwithstanding; but this right shall not apply to persons who perfect title to lands under the pre-emption or homestead laws already initiated; *Provided*, That all pre-emption settlers upon the public lands whose claims have been initiated prior to the passage of this act may change such entries to homestead entries and proceed to perfect their titles to their respective claims under the homestead law notwithstanding they may have heretofore had the benefit of such law, but such settlers who perfect title to such claims under the homestead law shall not thereafter be entitled to enter other lands under the pre-emption or homestead laws of the United States. [25 Stat. L. 854.]

The Act of June 14, 1878, ch. 189, "An Act for the relief of settlers on the public lands under the pre-emption laws," provided as follows:

"That any person who has made a settlement on the public lands under the pre-emption laws, and has subsequent to such settlement changed his filing in pursuance of law to that for a homestead entry upon the same tract of land shall be entitled sub-

ject to all the provisions of law relating to homesteads to have the time required to perfect his title under the homestead laws computed from the date of his original settlement heretofore made, or hereafter to be made, under the pre-emption laws." [20 Stat. L. 113.]

Similar provisions were contained in the Acts of March 3, 1877, ch. 123, 19 Stat. L. 404; May 27, 1878, ch. 140, 20 Stat. L. 63.

SEC. 3. [*Leave of absence on account of failure of crops, sickness, or other unavoidable casualty.* See p. 311.]

SEC. 4. [*Price of forfeited railroad lands.* See p. 335.]

SEC. 5. [*Additional entry of contiguous land up to one quarter-section in the aggregate.*] That any homestead settler who has heretofore entered less than one-quarter section of land may enter other and additional land lying contiguous to the original entry, which shall not, with the land first entered and occupied, exceed in the aggregate one hundred and sixty acres without proof of residence upon and cultivation of the additional entry; and if final proof of settlement and cultivation has been made for the original entry, when the additional entry is made, then the patent shall issue without further proof: *Provided*, That this section shall not apply to or for the benefit of any person who at the date of making application for entry hereunder does not own and occupy the lands covered by his original entry: *And provided*, That if the original entry should fail for any reason, prior to patent or should appear to be illegal or fraudulent, the additional entry shall not be permitted, or if having been initiated shall be canceled. [25 Stat. L. 854.]

SEC. 6. [*Additional entry after final proof up to one quarter-section in the aggregate.*] That every person entitled, under the provisions of the homestead laws, to enter a homestead, who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and received the receiver's final receipt therefor, shall be entitled under said laws to enter as a personal right, and not assignable, by legal subdivisions of the public lands of the United States subject to homestead entry, so much additional land as added to the quantity previously so entered by him shall not exceed one hundred and sixty acres: *Provided*, That in no case shall patent issue for the land covered by such additional entry until the person making such additional entry shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered and otherwise fully complied with such laws: *Provided, also*, That this section shall not be construed as affecting any rights as to location of soldiers certificates heretofore issued under section two thousand three hundred and six of the Revised Statutes. [25 Stat. L. 854.]

SEC. 7. [*Time extended for taking final proof.* See p. 299.]

SEC. 8. [*Abandoned military reservation act not repealed.*] That nothing in this act shall be construed as suspending, repealing or in any way rendering inoperative the provisions of the act entitled, "An act to provide for the disposal of abandoned and useless military reservations," approved July fifth, eighteen hundred and eighty-four. [25 Stat. L. 855.]

Sec. 2299. [*Existing pre-emption rights not impaired.*] Nothing contained in this chapter shall be so construed as to impair or interfere in any manner with existing pre-emption rights; and all persons who may have filed their applications for a pre-emption right prior to the twentieth day of May, eighteen hundred and sixty-two, shall be entitled to all the privileges of this chapter. [R. S.]

Act of May 20, 1862, ch. 75, 12 Stat. L. 393.
 Repeal of pre-emption laws. — See Act of
 March 3, 1891, ch. 561, sec. 4, *supra*, p. 285.

Change of pre-emption entry to homestead
 entry. See Act of March 2, 1889, ch. 381, sec.
 2, *supra*, p. 315.

Sec. 2300. [*What minors may have the privileges of this chapter.*] No person who has served, or may hereafter serve, for a period not less than fourteen days in the Army or Navy of the United States, either regular or volunteer,

under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this chapter on account of not having attained the age of twenty-one years. [R. S.]

Act of May 20, 1862, ch. 75, 12 Stat. L. 393.

Sec. 2301. [*Payment after expiration of fourteen months — rights of applicant.*] Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section twenty-two hundred and eighty nine from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen months, and the provision of this section shall apply to lands on the ceded portion of the Sioux Reservation by act approved March second, eighteen hundred and eighty-nine in South Dakota and in the State of Nebraska, but shall not relieve said settlers from any payments now required by law. [R. S.]

This section was amended to read as above by the Acts of March 3, 1891, ch. 561, sec. 6, 26 Stat. L. 1098, and Nov. 1, 1893, ch. 7, 28 Stat. L. 4, the latter Act merely adding the words "and in the state of Nebraska" following the words "South Dakota" in the section as given above.

The section originally read as follows:

"Sec. 2301. Nothing in this chapter shall be so construed as to prevent any person who has availed himself of the benefits of section twenty-two hundred and eighty-nine, from paying the minimum price for the quantity of land so entered, at any time before the expiration of the five years, and obtaining a patent therefor from the Government, as in other cases directed by law, on making proof of settlement and cultivation as provided by law, granting pre-emption rights." Act of May 20, 1862, ch. 75, 12 Stat. L. 393.

The Act of March 2, 1889, ch. 405, 25 Stat. L. 888, mentioned in the section, has been omitted from this work as local. The proclamation declaring the lands open was made Feb. 10, 1890, Proc. No. 9, 26 Stat. L. 1554.

"Commuted homestead entry."—"If the homestead settler does not wish to remain five years on the land, the law permits him to pay for it with cash, and to obtain a patent therefor from the government. In other words, he may abandon his rights under the homestead law and avail himself of the benefits of the law granting pre-emption rights. * * * When this is done it is called a 'commuted homestead entry.'" U. S. v. Howard, (1889) 37 Fed. Rep. 666.

Commutation is not pre-emption.—The commutation of a homestead entry under this section is not an exercise of the right of pre-emption. *Johnson v. Bridal Veil Lumbering Co.*, (1893) 24 Oregon 182, citing 4 Dec. Dept. Int. 441, 6 Dec. Dept. Int. 288.

Commutation of homestead confers new title.—Where an entryman, without complying with the conditions which are precedent to his right to obtain a homestead patent, elects and is permitted to surrender his homestead claim and to pay for the land as a pre-emptor, he makes a new and original

entry, and the patent which is issued in pursuance thereof gives him a new title to the land. Hence, he is not concluded by a judgment in an action of ejectment covering the land homesteaded, rendered after the original application but before commutation of the homestead, as the bar of a judgment in such an action is limited to the rights of the parties as they existed at the time it was rendered, and neither the parties nor their privies are precluded by such judgment from showing in a subsequent action any new matters occurring after its rendition which give the defeated party a title or right of possession. *Thrift v. Delaney*, (1886) 69 Cal. 188.

Effect of commutation on homestead exemption.—The entryman, by commuting his homestead and paying for the land under the pre-emption laws, does not lose the right to hold the land free from liability to sale for debts incurred by him prior to the issuance of the patent, notwithstanding the fact that he obtains his title, so far as the patent is concerned, under the laws regulating the granting of pre-emption rights. *Lewton v. Hower*, (1882) 18 Fla. 872; *Baldwin v. Boyd*, (1885) 18 Neb. 444; *Clark v. Bayley*, (1874) 5 Oregon 343. And see *supra*, R. S. 2296.

Qualified pre-emptor not estopped by entering homestead.—"In the absence of an adverse claim, a qualified pre-emptor is not deprived of his right to enter and purchase land as such, by the fact that he made an application for and occupied the land as a homestead before he declared his intention to become a citizen." *Bogan v. Edinburgh American Land Mortg. Co.*, (C. C. A. 1894) 63 Fed. Rep. 192.

Cancellation of patent for fraudulent commutation.—In a suit to cancel a patent, on the ground that the patentee's final proof for the commutation of his homestead entry was insufficient in the matter of residence and cultivation to entitle him to a commutation, where the bill failed to state any facts that would have justified the cancellation of the homestead entry, the court, in refusing the relief sought, said: "There is a wide distinction between the cancellation by the land

department of a homestead entry and a refusal by the same authority of an application by the settler for patent before the expiration of the homestead limit of five years. To justify the former action—that is, cancellation of a homestead entry—affirmative testimony must be adduced that the settler has changed his residence or abandoned the land for more than six months.” *Savage v. Worsham*, (1896) 72 Fed. Rep. 601.

Perjury cannot be predicated of an oath to immaterial and irrelevant statements, no

matter how false such statements may be. Thus where a homestead entryman, on his application for commutation of his homestead entry under this section, makes the affidavit required of an original applicant for homestead entry, but not required of an applicant for the commutation of such entry, the oath is as to immaterial and irrelevant matter and cannot support a conviction for perjury. *U. S. v. Howard*, (1889) 37 Fed. Rep. 666.

An Act Relating to commutations of homestead entries, and to confirm such entries when commutation proofs were received by local land officers prematurely.

[*Act of June 3, 1896, ch. 312, 29 Stat. L. 197.*]

[SEC. 1.] [*Prematurely commuted homestead entries confirmed.*] That whenever it shall appear to the Commissioner of the General Land Office that an error has heretofore been made by the officers of any local land office in receiving premature commutation proofs under the homestead laws, and that there was no fraud practiced by the entryman in making such proofs, and final payment has been made and a final certificate of entry has been issued to the entryman, and that there are no adverse claimants to the land described in the certificates of entry whose rights originated prior to making such final proofs, and that no other reason why the title should not vest in the entryman exists except that the commutation was made less than fourteen months from the date of the homestead settlement, and that there was at least six months' actual residence in good faith by the homestead entryman on the land prior to such commutation, such certificates of entry shall be in all things confirmed to the entryman, his heirs, and legal representatives, as of the date of such final certificate of entry and a patent issue thereon; and the title so patented shall inure to the benefit of any grantee or transferee in good faith of such entryman subsequent to the date of such final certificate: *Provided*, That this Act shall not apply to commutation and homestead entries on which final certificates have been issued, and which have heretofore been canceled when the lands made vacant by such cancellation have been reentered under the homestead Act. [29 Stat. L. 197.]

“By R. S. sec. 2301, homestead claimants were allowed to commute on making proof of settlement and cultivation as provided by law granting pre-emption rights.

“By 1891, March 3, ch. 561, sec. 6, R. S. sec. 2301, was amended so as to allow commutation on proof of settlement, residence, and cultivation for the period of fourteen months after the date of the entry.

“By 1890, May 2, ch. 182, sec. 21, settlers in (old) Oklahoma were allowed to pay for the land at \$1.25 per acre and receive a patent after twelve months from the date of locating upon the homestead, on showing compliance with all the laws relating to homestead settlement.

“By 1893, Oct. 20, ch. 5, sec. 2, settlers upon the Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe lands were allowed to pay for the land at \$1.50 per acre, and settlers on the public-land strip at \$1.25 per acre, and obtain a patent therefor by showing a compliance with all the

laws relating to homestead settlement to date of proof, at the expiration of twelve months from the date of locating upon the homestead.

“By 1894, Aug. 15, ch. 290, sec. 19 (28 Stat. L. 336), the right of commutation was extended to all *bona fide* settlers on lands in the Cherokee Outlet after fourteen months from date of settlement upon full payment for the lands at the prices provided in said Act.

“Sec. 2 of the Act in the text renders the period of commutation uniform at fourteen months, and section 1 confirms all prior commutations made in good faith after six months' residence on the land, but in less than fourteen months.” *Compilers' note*, 2 *Supp. R. S.* 492.

Six months' residence before entry.—The six months' residence required by this Act as a condition of the right to commute the homestead entry, may be had any time before commutation and need not be subsequent

to entry. This is true though the statute requires residence by the homestead "entryman." The courts will not give extraordinary force to the word "entryman" by holding that residence by an entryman can exist

only after entry, as the word is used in other sections of the homestead laws as merely descriptive of the persons to whom the laws apply. *McCord v. Hill*, (1901) 111 Wis. 527. See also *McCord v. Hill*, (1903) 117 Wis. 306.

SEC. 2. [*Commutation allowable after fourteen months.*] That all commutations of homestead entries shall be allowed after the expiration of fourteen months from date of settlement. [29 Stat. L. 197.]

SEC. 3. [*Repeal.*] That all Acts and parts of Acts in conflict with any of the provisions of this Act are hereby repealed. [29 Stat. L. 197.]

SEC. 4. [*Effect.*] That this Act shall take effect and be in force from and after its passage and approval. [29 Stat. L. 197.]

An Act For the relief of the Colorado Cooperative Colony; to permit second homesteads in certain cases, and for other purposes.

[Act of June 5, 1900, ch. 716, 31 Stat. L. 267.]

[SEC. 1.] [*Temporary, and expired.*]

SEC. 2. [*Additional entry to homesteaders commuting first entry.*] That any person who has heretofore made entry under the homestead laws and commuted same under provisions of section twenty-three hundred and one of the Revised Statutes of the United States and the amendments thereto shall be entitled to the benefits of the homestead laws, as though such former entry had not been made, except that commutation under the provisions of section twenty-three hundred and one of the Revised Statutes shall not be allowed of an entry made under this section of this Act. [31 Stat. L. 269.]

"In the report by the commissioner of the general land office on the bill containing the provisions embodied in the second and third sections of the above Act (Senate Rep. 1155, Fifty-sixth Congress, first session) it was said:

"The Act is practically an extension of the privilege conferred by the second section of the Act of March 2, 1889, except as to that provision of the bill now under consideration which makes subject to its provisions all homestead entries which have been perfected under the commutation clause of the homestead law.

"Such a provision, however, was embodied in the Act of March 2, 1889 (25 Stat. L. 1004), providing for the disposal of the Seminole lands in the Territory of Oklahoma; also in the Act of February 13, 1891 (26 Stat. L. 759), providing for the disposal of lands in Oklahoma acquired by agreement with the Sac and Fox Indians; also in the Act of March 3, 1891 (26 Stat. L. 1043), providing for the disposal of the lands in Montana ceded by the Crow Indians, and in the Act of March 3, 1893 (27 Stat. L. 563), providing for the disposal of the Kickapoo lands in Oklahoma—all of which provided that any person who, having attempted to,

but from any cause failed to, acquire a title in fee under the homestead law, or who made entry under what is known as the commutation provision of the homestead law, shall be qualified to make homestead entry of said land.

"The Act of Sept. 29, 1890, restoring to settlement forfeited railroad lands, also contained the provision that 'any person who has not heretofore had the benefit of the homestead or pre-emption laws, or who has from any cause failed to perfect the title to a tract of land heretofore entered by him under either of said laws, may make a second homestead entry under the provisions of this Act.' The Act of Dec. 20, 1894, amending section 3 of the Act of March 2, 1889, permitted any settler who had theretofore forfeited his or her entry by reason of being unable from a total or partial destruction of crops, sickness, or other unavoidable casualty to secure a support for himself, herself, or those dependent upon him or her, to make entry of not to exceed a quarter-section on any public lands subject to entry under the homestead law and to perfect title to the same under the same conditions in every respect as if he had not made a former entry." *Compilers' note*, 2 Supp. R. S. 1189.

SEC. 3. [*In case of forfeiture — purchasers of Flathead Indian lands.*] That any person who prior to the passage of this Act, has made entry under the homestead laws, but from any cause has lost or forfeited the same shall be entitled to the benefits of the homestead laws as though such former entry had not

been made: *Provided*, That persons who purchased land under and in accordance with the terms of an Act entitled "An Act to provide for the sale of lands patented to certain members of the Flathead band of Indians in the Territory of Montana, and for other purposes," approved March second, eighteen hundred and eighty-nine, shall not be held to have impaired or exhausted their homestead rights by or on account of any such purchase. [31 Stat. L. 270.]

An Act Providing for free homesteads on the public lands for actual and bona fide settlers, and reserving the public lands for that purpose.

[Act of May 17, 1900, ch. 479, 31 Stat. L. 179.]

[SEC. 1.] [*Free homesteads to bona fide settlers on Indian lands opened to settlement — commutation of entry — payment to Indians.*] That all settlers under the homestead laws of the United States upon the agricultural public lands, which have already been opened to settlement, acquired prior to the passage of this Act by treaty or agreement from the various Indian tribes, who have resided or who shall hereafter reside upon the tract entered in good faith for the period required by existing law, shall be entitled to a patent for the land so entered upon the payment to the local land officers of the usual and customary fees, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry: *Provided*, That the right to commute any such entry and pay for said lands in the option of any such settler and in the time and at the prices now fixed by existing laws shall remain in full force and effect: *Provided, however*, That all sums of money so released which if not released would not belong to any Indian tribe shall be paid to such Indian tribe by the United States, and that in the event that the proceeds of the annual sales of the public lands shall not be sufficient to meet the payments heretofore provided for agricultural colleges and experimental stations by an Act of Congress, approved August thirtieth, eighteen hundred and ninety, for the more complete endowment and support of the colleges for the benefit of agriculture and mechanic arts, established under the provisions of an Act of Congress, approved July second, eighteen hundred and sixty-two, such deficiency shall be paid by the United States: *And provided further*, That no lands shall be herein included on which the United States Government had made valuable improvements, or lands that had been sold at public auction by said Government. [31 Stat. L. 179.]

SEC. 2. [*Repeal.*] That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. [31 Stat. L. 179.]

An Act To allow the commutation of homestead entries in certain cases.

[Act of Jan. 26, 1901, ch. 180, 31 Stat. L. 740.]

[*Commutation to settlers under free homestead laws.*] That the provisions of section twenty-three hundred and one of the Revised Statutes of the United States, as amended, allowing homestead settlers to commute their homestead entries be, and the same hereby are, extended to all homestead settlers affected by or entitled to the benefits of the provisions of the Act entitled "An Act providing for free homesteads on the public lands for actual and bona fide settlers, and reserving the public lands for that purpose," approved the seventeenth day of May, anno Domini nineteen hundred. *Provided, however*, That in commuting such entries the entryman shall pay the price provided in the law under which original entry was made. [31 Stat. L. 740.]

An Act To allow the commutation of and second homestead entries in certain cases.

[Act of May 22, 1902, ch. 821, 32 Stat. L. 203.]

[SEC. 1.] [*Settlers on ceded Sioux Reservation in South Dakota allowed to commute entries.*] That homestead settlers upon the ceded portion of the Sioux Indian Reservation in South Dakota who made entry subsequent to March third, eighteen hundred and ninety-nine, shall be entitled to the provisions of the Act entitled "An Act to allow commutation of homestead entries in certain cases," approved January twenty-sixth, nineteen hundred and one, and in commuting shall only be required to pay the price provided in the law under which original entry was made. [32 Stat. L. 203.]

SEC. 2. [*Second homestead entries permitted settlers prior to May 17, 1900.*] That any person who, prior to the passage of an Act entitled "An Act providing for free homesteads on the public lands for actual and bona fide settlers, and reserving the public lands for that purpose," approved May seventeenth, nineteen hundred, having made a homestead entry and perfected the same and acquired title to the land by final entry by having paid the price provided in the law opening the land to settlement, and who would have been entitled to the provisions of the Act before cited had final entry not been made prior to the passage of said Act, may make another homestead entry of not exceeding one hundred and sixty acres of any of the public lands in any State or Territory subject to homestead entry: *Provided*, That any person desiring to make another entry under this Act will be required to make affidavit, to be transmitted with the other filing papers now required by law, giving the description of the tract formerly entered, date and number of entry, and name of the land office where made, or other sufficient data to admit of readily identifying it on the official records: *And provided further*, That said person has all the other proper qualifications of a homestead entryman: *And provided also*, That commutation under section twenty-three hundred and one of the Revised Statutes, or any amendment thereto, or any similar statute, shall not be permitted of an entry made under this Act, excepting where the final proof, submitted on the former entry hereinbefore described, shows a residence upon the land covered thereby for the full period of five years, or such term of residence thereon as added to any properly credited military or naval service shall equal such period of five years. [32 Stat. L. 203.]

Sec. 2302 [*No distinction on account of race or color — mineral lands.*] No distinction shall be made in the construction or execution of this chapter, on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions. [R. S.]

Act of June 21, 1866, ch. 127, 14 Stat. L. 67.

Land known to be valuable for its minerals. — "It is plain, from this brief statement of the legislation of Congress, that no title from the United States to land known at the time of sale to be valuable for its minerals of gold, silver, cinnabar, or copper can be obtained under the pre-emption or homestead laws or the town-site laws, or in any other way than as prescribed by the laws specially authorizing the sale of such lands, except in the states of Michigan, Wisconsin, Minnesota, Missouri, and Kansas. We say 'land known at the time to be valuable for its minerals,' as there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity

as to justify expenditures in the effort to extract them. It is not to such lands that the term 'mineral' in the sense of the statute is applicable. In the first section of the Act of 1866 no designation is given of the character of mineral lands which are free and open to exploration. But in the Act of 1872, which repealed that section and reenacted one of broader import, it is 'valuable mineral deposits' which are declared to be free and open to exploration and purchase. The same term is carried into the Revised Statutes. It is there enacted that 'lands valuable for minerals' shall be reserved from sale, except as otherwise expressly directed, and that 'valuable mineral deposits' in lands belonging to the United States shall

be free and open to exploration and purchase. We also say lands 'known' at the time of their sale to be thus valuable, in order to avoid any possible conclusion against the validity of titles which may be issued for other kinds of land, in which, years afterwards, rich deposits of mineral may be discovered. It is quite possible that lands settled upon as suitable only for agricultural purposes, entered by the settler and patented by the government under the pre-emption

laws, may be found, years after the patent has been issued, to contain valuable minerals. Indeed, this has often happened. We, therefore, use the term 'known' to be valuable at the time of sale, to prevent any doubt being cast upon titles to lands afterwards found to be different in their mineral character from what was supposed when the entry of them was made and the patent issued." *Deffeback v. Hawke*, (1885) 115 U. S. 392.

Sec. 2303. [*What lands disposed of only as homesteads.*] [*Repealed.*]

This section was as follows:

"Sec. 2303. All the public lands in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida, shall be disposed of in no other manner than according to the terms and stipulations contained in the pre-

ceding provisions of this chapter." Act of June 21, 1866, ch. 127, 14 Stat. L. 67.

It was directly repealed by the provisions in the following text.

This section was construed in *U. S. v. Pratt Coal, etc., Co.*, (1883) 18 Fed. Rep. 708.

An act to repeal section two thousand three hundred and three of the Revised Statutes of the United States, making restrictions in the disposition of the public lands in the States of Alabama, Mississippi, Louisiana, Arkansas and Florida, and for other purposes.

[*Act of July 4, 1876, ch. 165, 19 Stat. L. 73.*]

[*Repeal of R. S. sec. 2303.*] That section two thousand three hundred and three of the Revised Statutes of the United States, confining the disposal of the public lands in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida to the provisions of the homestead law, be, and the same is hereby, repealed: *Provided*, That the repeal of said section shall not have the effect to impair the right, complete or inchoate, of any homestead settler, and no land occupied by such settler at the time this act shall take effect, shall be subject to entry, pre-emption, or sale: *And provided*, That the public lands affected by this act, shall be offered at public sale, as soon as practicable from time to time, and according to the provisions of existing law, and shall not be subject to private entry until they are so offered. [19 Stat. L. 73.]

This Act is incorporated into sec. 2303 of the second edition of the Revised Statutes.

The last provision of the section in the text

would seem to be repealed by Act of March 3, 1891, ch. 561, sec. 9, *infra*, p. 331.

Sec. 2304. [*Soldiers' and sailors' homestead.*] Every private soldier and officer who has served in the Army of the United States during the recent rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an Act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, and every private soldier and officer who has served in the Army of the United States during the Spanish war, or who has served, is serving, or shall have served in the said Army during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged; and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the Spanish war, or who has served, is serving, or shall have served in the said forces during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged, shall, on compliance with the provisions of this

chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement. [R. S.]

Act of June 8, 1872, ch. 338, 17 Stat. L. 333.

This section was amended to read as above by the Act of March 1, 1901, ch. 674, 31 Stat. L. 847. The amendment consists in the addition of the matter commencing with "and every private soldier and officer" down to and including the words "the Philippines for ninety days, and who was or shall be honorably discharged."

State troops not entitled to homestead. — The troops known as the "Enrolled Missouri Militia," though acting from time to time in

co-operation with the army of the United States in the suppression of the rebellion, constituted no part of such army, as they were never mustered into the service of the United States; and an order disbanding such troops (though entirely creditable to the troops thus discharged) is not an honorable discharge within the meaning of this section. Hence, persons who served with such enrolled militia are not entitled to enter homesteads under the provisions of this section. (1878) 16 Op. Atty.-Gen. 147.

Sec. 2305. [*Deduction of military and naval service from time, etc.*] The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements: *Provided*, That in every case in which a settler on the public land of the United States under the homestead laws died while actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the war with Spain or the Philippine insurrection, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, may proceed forthwith to make final proof upon the land so held by the deceased soldier and settler, and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation for the full period of five years, and shall entitle his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, to make final proof upon and receive Government patent for said land; and that upon proof produced to the officers of the proper local land office by the widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, that the applicant for patent is the widow, if unmarried, or in case of her death or marriage, his orphan children or his or their legal representatives, and that such soldier, sailor, or marine died while in the service of the United States as hereinbefore described, the patent for such land shall issue. [R. S.]

Act of June 8, 1872, ch. 338, 17 Stat. L. 333.

This section was amended to read as above by the Act of March 1, 1901, ch. 674, 31 Stat.

L. 847. The amendment consists in the addition of all matter commencing with the proviso down to the end of the section.

An Act For the protection of homestead settlers who enter the military or naval service of the United States in time of war.

[Act of June 16, 1898, ch. 458, 30 Stat. L. 473.]

[*Service in Army, Navy, or Marine Corps equivalent to residence, etc.*] That in every case in which a settler on the public land of the United States under the homestead laws enlists or is actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the existing war with Spain, or during any other war in which the United States may be engaged, his services therein shall, in the administration of the homestead laws, be construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, unless it shall be alleged in the preliminary affidavit or affidavits of contest, and proved at the hearing in cases hereafter initiated, that the settler's alleged absence from the land was not due to his employment in such service: *Provided*, That if such settler shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence without reference to the time of actual service: *Provided further*, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements. [30 Stat. L. 473.]

Sec. 2306. [*Persons who have entered less than 160 acres, rights of.*] Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres. [R. S.]

Act of June 8, 1872, ch. 338, 17 Stat. L. 333.

But see Act of June 16, 1880, ch. 244, *infra*, p. 326.

Conditions precedent to right to claim additional homestead.—"It will be seen from this section and from section 2304 that three things must concur in order to entitle a person to claim an additional homestead: (1) he must be one of the persons enumerated in section 2304, viz., a Union soldier or officer in the late war of the rebellion honorably discharged; (2) he must have entered a homestead under the homestead laws prior to March 3, 1873; (3) such entry must have been for less than one hundred and sixty acres. These three things concurring, it appears that the grant is absolute." *Montague v. McCarroll*, (1894) 10 Utah 22.

Additional homestead is bounty.—The grant of a soldiers' additional homestead is in the nature of a bounty or gift extended by the government to its soldiers in the war of the rebellion, and an application for such additional homestead is not to be treated as an application for a homestead under the homestead laws. *U. S. v. Lair*, (1902) 118 Fed. Rep. 98.

Occupancy not required.—Occupancy on

the part of one entering an additional homestead under this section is not required. The government certainly did not intend that the beneficiary should abandon his original homestead which he had cultivated and improved, in order to secure the additional number of acres which this section authorizes him to locate at another place. The provisions of other sections of this chapter respecting residence on the land entered are therefore inapplicable to additional homestead entries made under this section. *Rose v. Nevada*, etc., *Wood, etc., Co.*, (1887) 73 Cal. 385; *Montague v. McCarroll*, (1894) 10 Utah 22; *Knight v. Leary*, (1882) 54 Wis. 459. See also *Grant v. Oliver*, (1891) 91 Cal. 158.

And in an action of ejectment brought by one who purchased the land entered from the entryman, where the patent recited generally that the land was entered "pursuant to the Act of Congress approved May 20, 1862, * * * and the acts supplemental thereto," without referring specifically to this section, it was held that the recital did not throw on the plaintiff the burden of showing that the homestead was not initiated and acquired under the laws requiring actual settlement and residence by the entryman. *Grant v. Oliver*, (1891) 91 Cal. 158.

Presumption that entry without occupancy is valid.—Where the patent recited that the entryman's claim had been "established and duly consummated in conformity to law" and that it was issued pursuant to the Act of Congress approved May 20, 1862, "to secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, it was held that it would be presumed that the entry was made under the provisions of this section, which did not require actual occupancy, on the ground that it must be presumed that the recitals of the patent were true if there was any method by which a valid entry of the land under the acts recited could have been made without actual occupancy. *Knight v. Leary*, (1882) 54 Wis. 459.

Right of entry transferable.—As Congress has imposed no restriction on the assignment of such right, the right of a soldier who has previously entered less than one hundred and sixty acres under the homestead laws, to enter enough more land to make up that quantity, is assignable before entry. *Webster v. Luther*, (1896) 163 U. S. 331, *affirming* (1892) 50 Minn. 77; *Barnes v. Poirier*, (1894) 27 U. S. App. 500, *affirming* (1893) 57 Fed. Rep. 956; *Rose v. Nevada, etc., Wood, etc., Co.*, (1887) 73 Cal. 385; *Bradley v. Whitesides*, (1893) 55 Minn. 455; *Tuman v. Pillsbury*, (1895) 60 Minn. 520; *Montague v. McCarroll*, (1894) 10 Utah 22; *Montague v. McCarroll*, (1897) 15 Utah 318. *Contra*, *Nichols v. Council*, (1888) 51 Ark. 26; *Macintosh v. Renton*, (1882) 2 Wash. Ter. 121. Or after entry but before the issuance of the patent. *Grant v. Oliver*, (1891) 91 Cal. 159; *Stewart v. Sutherland*, (1892) 93 Cal. 270; *Montgomery v. Pacific Coast Land Bureau*, (1892) 94 Cal. 284; *Knight v. Leary*, (1882) 54 Wis. 459.

This is true notwithstanding the fact that a right of entry under the provisions of R. S. 2304 is not assignable before entry. *Montague v. McCarroll*, (1894) 10 Utah 22.

And the courts are not bound by the fact that it was the practice of the land department during a certain period to treat the statutory right of entry of additional land as entirely personal and not assignable or transferable, as the courts will not permit the practice of the executive department to defeat the obvious purpose of a statute. *Webster v. Luther*, (1896) 163 U. S. 331, *affirming* (1892) 50 Minn. 77; *Barnes v. Poirier*, (1894) 27 U. S. App. 500, *affirming* (1893) 57 Fed. Rep. 956.

An irrevocable power of attorney executed by the entryman in consideration of the sum of five dollars, which authorizes the donee of the power to enter upon and take possession of the land homesteaded and vests him with power to sell such land and deliver a deed of conveyance thereof, is a power with an interest, and is sufficient to convey the entryman's title to land entered under this section, and is binding on the entryman, his heirs and assigns. *Montague v. McCarroll*, (1897) 15 Utah 318.

Construction of various powers of attorney.—For instances of powers of attorney to enter and sell the additional homestead rights of soldiers which were held sufficient, see *Bradley v. Whitesides*, (1893) 55 Minn. 455; *Tuman v. Pillsbury*, (1895) 60 Minn. 520; *Snell v. Weyerhauser*, (1898) 71 Minn. 57; *Pardoe v. Merritt*, (1898) 75 Minn. 12. For instance of power held insufficient, see *Cox v. Manvel*, (1892) 50 Minn. 87.

Right of entry of additional homestead is personal property.—The right to enter an additional homestead under the provisions of this section is personal property, and as Congress has placed no restriction on the disposition of the right, it may be sold before entry. Hence, where the minor children of a deceased soldier are entitled to locate and enter an additional homestead, the right of entry may be sold by their guardian under a statute permitting him to sell his wards' personal property without an order of court. *Mullen v. Wine*, (1886) 26 Fed. Rep. 206, *appeal dismissed* in (1889) 136 U. S. 654; *Pardoe v. Merritt*, (1898) 75 Minn. 12. And see *infra*, R. S. 2307.

Proof of illegality of entry.—Where the record of the land office showed that an entry was made in the name of a soldier's widow, as the soldier's additional homestead, under sections 2304, 2306 of the Revised Statutes, by filing the papers required by the practice prevailing in the land office at that time, and a power of attorney exhibited at the land office was not filed, the cancellation of the entry more than ten years after it was made, by the commissioner of the general land office, on the ground of fraud, was unwarranted, where there was no pretense of making a formal inquiry into the actual facts of the transaction, no taking of proof, no distinct findings of any facts upon which the conclusion that the additional entry was fraudulent could be founded, and no evidence except an unauthenticated letter purporting to have been written by the person in whose name the original entry was made. *Puget Mill Co. v. Brown*, (1893) 54 Fed. Rep. 987, *affirmed* in (C. C. A. 1893) 59 Fed. Rep. 35.

Filing application.—The application of a party entitled to enter lands under this section must be regarded as filed when it is delivered to the proper officer and received by him for filing, and the rights of the applicant will not be affected by the failure of the clerks to perform their duties in respect to the filing. *Hastay v. Bonness*, (1901) 84 Minn. 120.

False affidavit by applicant.—Since the additional homestead granted under this section is in the nature of a bounty or gift, the making of a false affidavit by an applicant violates provisions of R. S. sec. 5438; and a prosecution may be maintained for a false affidavit made before a notary public or any other officer authorized to administer oaths for general purposes in the state, city, or county where such officer resides. U. S. v. *Lair*, (1902) 118 Fed. Rep. 98.

An act for the relief of certain settlers on the public lands, and to provide for the repayment of certain fees, purchase money and commissions paid on void entries of public lands.

[Act of June 16, 1880, ch. 244, 21 Stat. L. 287.]

[SEC. 1.] [*Refund of fees, etc., for canceled entries of soldiers' and sailors' homesteads.*] That in all cases where it shall, upon due proof being made, appear to the satisfaction of the Secretary of the Interior that innocent parties have paid the fees and commissions and excess payments required upon the location of claims under the act entitled "An act to amend an act entitled 'An act to enable honorably discharged soldiers and sailors, their widows and orphan children, to acquire homesteads on the public lands of the United States', and amendments thereto", approved March third eighteen hundred and seventy-three, and now incorporated in section twenty-three hundred and six of the Revised Statutes of the United States, which said claims were, after such location, found to be fraudulent and void, and the entries or locations made thereon canceled, the Secretary of the Interior is authorized to repay to such innocent parties the fees and commissions, and excess payments paid by them, upon the surrender of the receipts issued therefor by the receivers of public moneys, out of any money in the Treasury not otherwise appropriated, and shall be payable out of the appropriation to refund purchase-money on lands erroneously sold by the United States. [21 Stat. L. 287.]

SEC. 2. [*Refund of fees, etc., where entries canceled or not confirmed, or double price paid.*] In all cases where homestead or timber-culture or desert-land entries or other entries of public lands have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry has been erroneously allowed and cannot be confirmed, the Secretary of the Interior shall cause to be repaid to the person who made such entry, or to his heirs or assigns, the fees and commissions, amount of purchase money, and excesses paid upon the same upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said land, whenever such entry shall have been duly canceled by the Commissioner of the General Land Office, and in all cases where parties have paid double-minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of one dollar and twenty-five cents per acre shall in like manner be repaid to the purchaser thereof, or to his heirs or assigns. [21 Stat. L. 287.]

SEC. 3. [*Appropriation.*] The Secretary of the Interior is authorized to make the payments herein provided for, out of any money in the Treasury not otherwise appropriated. [21 Stat. L. 287.]

SEC. 4. [*Rules by the commissioner — warrants for payment.*] The Commissioner of the General Land Office shall make all necessary rules, and issue all necessary instructions, to carry the provisions of this act into effect; and for the repayment of the purchase money and fees herein provided for the Secretary of the Interior shall draw his warrant on the Treasury and the same shall be paid without regard to the date of the cancellation of the entries. [21 Stat. L. 287.]

An act for relief of certain settlers on public land in the Tucson land district in Arizona.

[Act of Feb. 15, 1893, ch. 119, 27 Stat. L. 456.]

[SEC. 1.] [*Refund of excess of fees, etc., for lands entered at Tucson, Arizona.*] That all persons having filed for or entered lands within the Tucson land district in Arizona who shall prove to the satisfaction of the register and

receiver of the Tucson land office and the Commissioner of the General Land Office that he has paid any money in fees, commissions, or for the land more than once, or where he has paid double minimum price for land after it was proclaimed for purchase at single minimum by the General Land Office, that such excess so paid shall be repaid to the person who so paid the same, or to his heirs or personal representative. [27 Stat. L. 456.]

SEC. 2. [*Examination of such claims — appropriation.*] That it shall be the duty of such register and receiver to hear the proofs in such cases and make report thereof and their decision thereon to the Commissioner of the General Land Office, who, on receipt of the same, and upon the approval of the Secretary of the Interior, shall transmit to the Secretary of the Treasury the names of the beneficiaries, and the amount due each, and the Secretary of the Treasury is authorized and directed to pay the same out of any money in the Treasury not otherwise appropriated. [27 Stat. L. 456.]

[*Invalid soldiers' additional homestead entries may be commuted.*] * * * That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land; but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate. * * * [27 Stat. L. 593.]

This is from the Sundry Civil Appropriation Act of March 3, 1893, ch. 208.

[SEC. 1.] [*Validation of sale of soldiers' additional homestead certificates.*] * * * That all soldiers' additional homestead certificates heretofore issued under the rules and regulations of the General Land Office under section twenty-three hundred and six of the Revised Statutes of the United States, or in pursuance of the decisions or instructions of the Secretary of the Interior, of date March tenth, eighteen hundred and seventy seven, or any subsequent decisions or instructions of the Secretary of the Interior or the Commissioner of the General Land Office, shall be, and are hereby, declared to be valid, notwithstanding any attempted sale or transfer thereof; and where such certificates have been or may hereafter be sold or transferred, such sale or transfer shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value; and all entries heretofore or hereafter made with such certificates by such purchasers shall be approved, and patent shall issue in the name of the assignees. * * * [28 Stat. L. 397.]

This is from the Sundry Civil Appropriation Act of Aug. 18, 1894, ch. 301.

Sec. 2307. [*Widow and minor children of persons entitled to homestead, etc.*] In case of the death of any person who would be entitled to a homestead under the provisions of section twenty-three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of

the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvements therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title. [R. S.]

Act of June 8, 1872, ch. 338, 17 Stat. L. 333.

Sec. 2308. [*Actual service in the Army or Navy equivalent to residence, etc.*] Where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the Army or Navy of the United States, his services therein shall, in the administration of such homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered. And if his entry has been canceled by reason of his absence from such tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored; but if such tract has been disposed of, the party may enter another tract subject to entry under the homestead laws, and his right to a patent therefor may be determined by the proofs touching his residence and cultivation of the first tract and his absence therefrom in such service. [R. S.]

Act of June 8, 1872, ch. 338, 17 Stat. L. 333.

See further Act of June 16, 1898, ch. 458, *supra*, p. 324.

The effect of this section is to declare service in the army or navy of the United

States by the entryman at the date of his entry equivalent to actual residence on the land. *Hastings, etc., R. Co. v. Whitney*, (1889) 132 U. S. 357, *affirming* (1886) 34 Minn. 538.

Sec. 2309. [*Who may enter by agent.*] Every soldier, sailor, marine, officer, or other person coming within the provisions of section twenty-three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in pre-emption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of law. [R. S.]

Act of June 8, 1872, ch. 338, 17 Stat. L. 334.

Sec. 2310. [*Chiefs, etc., of Stockbridge Munsees, homestead rights of.*] Each of the chiefs, warriors, and heads of families of the Stockbridge Munsee tribes of Indians, residing in the county of Shawana, State of Wisconsin, may, under the direction of the Secretary of the Interior, enter a homestead and become entitled to all the benefits of this chapter, free from any fee or charge; and any part of their present reservation, which is abandoned for that purpose, may be sold, under the direction of the Secretary of the Interior, and the proceeds applied for the benefit of such Indians as may settle on homesteads, to aid them in improving the same. [R. S.]

Act of March 3, 1865, ch. 127, 13 Stat. L. 562.

Sec. 2311. [*Exemption of homestead of Stockbridge Munsees.*] The homestead secured, by virtue of the preceding section, shall not be subject to any tax, levy, or sale; nor shall it be sold, conveyed, mortgaged, or in any manner incumbered, except upon the decree of the district court of the United States, as provided in the following section. [R. S.]

Act of March 3, 1865, ch. 127, 13 Stat. L. 562.

SEC. 15. [*Certain Indians entitled to benefit of homestead laws.*] That any Indian born in the United States, who is the head of a family, or who has arrived at the age of twenty-one years, and who has abandoned, or may hereafter abandon, his tribal relations, shall, on making satisfactory proof of such abandonment, under rules to be prescribed by the Secretary of the Interior, be entitled to the benefits of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two, and the acts amendatory thereof, except that the provisions of the eighth section of the said act shall not be held to apply to entries made under this act: *Provided, however,* That the title to lands acquired by any Indian by virtue hereof shall not be subject to alienation or incumbrance, either by voluntary conveyance or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor: *Provided,* That any such Indian shall be entitled to his distributive share of all annuities, tribal funds, lands, and other property, the same as though he had maintained his tribal relations; and any transfer, alienation, or incumbrance of any interest he may hold or claim by reason of his former tribal relations shall be void. [18 Stat. L. 420.]

This and the following section 16 are from the Deficiencies Appropriation Act of March 3, 1875, ch. 131. The Act referred to in the text is incorporated into the Revised Statutes

as sections 2238, 2240, 2289, 2290, 2295-2300. The eighth section of the Act of May 20, 1862, is incorporated into the Revised Statutes as section 2301.

SEC. 16. [*Entries of homestead by, heretofore made, confirmed.*] That in all cases in which Indians have heretofore entered public lands under the homestead-law, and have proceeded in accordance with the regulations prescribed by the Commissioner of the General Land Office, or in which they may hereafter be allowed to so enter under said regulations prior to the promulgation of regulations to be established by the Secretary of the Interior under the fifteenth section of this act, and in which the conditions prescribed by law have been or may be complied with, the entries so allowed are hereby confirmed, and patents shall be issued thereon; subject, however, to the restriction and limitations contained in the fifteenth section of this act in regard to alienation and incumbrance. [18 Stat. L. 420.]

See note to section 15, *supra*.

[SEC. 1.] [*Further application of homestead laws to Indians — patented lands held in trust.*] * * * That such Indians as may now be located on public lands, or as may, under the direction of the Secretary of the Interior, or otherwise, hereafter, so locate may avail themselves of the provisions of the homestead laws as fully and to the same extent as may now be done by citizens of the United States; and to aid such Indians in making selections of homesteads and the necessary proofs at the proper land offices, one thousand dollars, or so much thereof as may be necessary, is hereby appropriated; but no fees or commissions shall be charged on account of said entries or proofs. All patents therefor shall be of the legal effect, and declare that the United States does and will hold the land thus entered for the period of twenty-five years, in trust for the sole use and benefit of the Indian by whom such entry shall have been made, or, in case of his decease, of his widow and heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his widow and heirs as aforesaid, in fee,

discharged of said trust and free of all charge or incumbrance whatsoever.
* * * [23 Stat. L. 96.]

This is from the Indian Appropriation Act of July 4, 1884, ch. 180.

Sec. 2312. [*Stockbridge Munsees becoming citizens.*] Whenever any of the chiefs, warriors, or heads of families of the tribes mentioned in section twenty-three hundred and ten, having filed with the clerk of the district court of the United States a declaration of his intention to become a citizen of the United States, and to dissolve all relations with any Indian tribe, two years previous thereto, appears in such court, and proves to the satisfaction thereof, by the testimony of two citizens, that for five years last passed he has adopted the habits of civilized life; that he has maintained himself and family by his own industry; that he reads and speaks the English language; that he is well disposed to become a peaceable and orderly citizen; and that he has sufficient capacity to manage his own affairs; the court may enter a decree admitting him to all the rights of a citizen of the United States and thenceforth he shall be no longer held or treated as a member of any Indian tribe, but shall be entitled to all the rights and privileges and be subject to all the duties and liabilities to taxation of other citizens of the United States. But nothing herein contained shall be construed to deprive such chiefs, warriors, or heads of families of annuities to which they are or may be entitled. [R. S.]

Act of March 3, 1865, ch. 127, 13 Stat. L. 562.

Sec. 2313. [*Unsold lands of the Ottawa and Chippewa Indians, how opened for homestead.*] The unoccupied lands in the reservation made for the Ottawa and Chippewa Indians, of Michigan, by the treaty of July thirty-one, eighteen hundred and fifty-five, shall be open to homestead entry for six months from the tenth day of June, eighteen hundred and seventy-two, by Indians only of those tribes, who have not made selections or purchases under the treaty, including such members of the tribes as have become of age since the expiration of the ten years named in the treaty; and every Indian so entitled shall be permitted to make his homestead entry, at the local land-office, within such six months, of not exceeding one hundred and sixty acres, or one quarter-section of minimum, or eighty acres of double minimum land, on making proper proof of his right, under such rules as may be prescribed by the Secretary of the Interior. [R. S.]

Act of June 10, 1872, ch. 424, 17 Stat. L. 381.

Sec. 2314. [*Selection for minors under preceding section.*] The collector of customs for the district in which such land is situated, is authorized, and it is made his duty, to select for such minor children as would be entitled, under the preceding section, as the heirs of any Indian. [R. S.]

Act of June 10, 1872, ch. 424, 17 Stat. L. 381.

Sec. 2315. [*Bona-fide settlers on above lands prior to, etc.*] All actual, permanent, bona-fide settlers on any of such lands who settled prior to the first day of January, eighteen hundred and seventy-two, shall be entitled to enter either under the homestead laws or to pay for at the minimum or double minimum price, as the case may be, not exceeding one hundred and sixty acres of the former or eighty acres of the latter class of land on making proof of his settlement and continued residence before the expiration of six months from the tenth day of June, eighteen hundred and seventy-two. [R. S.]

Act of June 10, 1872, ch. 424, 17 Stat. L. 381.

Sec. 2316. [*Certain lands to be patented to Indians making selection.*] All selections of such lands by Indians heretofore made and regularly reported and recognized as valid and proper by the Secretary of the Interior and Commissioner of Indian Affairs, shall be patented to the respective Indians making the same; and all sales heretofore made and reported, where the same are regular and not in conflict with such selections, or with any other valid adverse right, except of the United States, are confirmed, and patents shall issue thereon as in other cases according to law. [R. S.]

Act of June 10, 1872, ch. 424, 17 Stat. L. 381.

Sec. 2317. [*Repealed.*] [See *infra*, div. XVII. *Timber Culture.*]

R. S. secs. 2318-2352 relate to mineral lands. See vol. 5, p. 1.

[VII. SALE AND DISPOSAL OF THE PUBLIC LANDS.]

Sec. 2353. [*Public sale of lands in half quarter-sections.*] All the public lands, the sale of which is authorized by law, shall, when offered at public sale to the highest bidder, be offered in half quarter-sections. [R. S.]

Act of April 24, 1820, ch. 51, 3 Stat. L. 566.
But see the following section.

Sections 2353-2379 constitute chapter 7 of title 32 of the Revised Statutes, entitled as above.

The first section of the Act of April 24, 1820 (3 Stat. L. 566), after referring to the Act of 1805, provided that "fractional sections, containing one hundred and sixty acres, or upwards, shall, in like manner, as nearly as practicable, be sub-divided into half quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury; but fractional sections, containing less than one hundred and sixty acres, shall not be divided, but shall be sold entire." The secretary of the treasury issued his regulations to the surveyor-general, through the commissioner of the land office, on the 10th day of June following, in which he directed that fractional sections containing more than

one hundred and sixty acres should be divided into half quarter-sections by north and south or east and west lines, so as to preserve the most compact and convenient forms. Under this Act and the regulations of the land office some latitude of discretion has been exercised by the surveyor-general in the division of fractional sections exceeding the quantity mentioned, regard being had to convenient forms, and to avoid the subdivision of the public domain into ill-shaped and unsalable fractions. The requirements did not make it indispensable under all circumstances for a full or half quarter-section to be laid off, though the fraction was capable of such subdivision. (1837) 3 Op. Atty-Gen. 281; *Gazzam v. Phillips*, (1857) 20 How. (U. S.) 372, wherein the court refused to follow *Brown v. Clements*, (1845) 3 How. (U. S.) 650, which held to the contrary.

SEC. 9. [*Public lands not to be sold at public auction — exceptions.*] That hereafter no public lands of the United States, except abandoned military or other reservations isolated and disconnected fractional tracts authorized to be sold by section twenty-four hundred and fifty-five of the Revised Statutes, and mineral and other lands the sale of which at public auction has been authorized by acts of Congress of a special nature having local application, shall be sold at public sale. [26 Stat. L. 1099.]

This is from the Act of March 3, 1891, ch. 561, "An act to repeal timber-culture laws, and for other purposes."

Abandoned military reservations, provisions for sale of, see *infra*, div. XIV.

Sec. 2354. [*Private sales in what bodies.*] All the public lands, when offered at private sale, may be purchased, at the option of the purchaser, in en-

tire sections, half-sections, quarter-sections, half quarter-sections, or quarter quarter-sections. [R. S.]

Act of April 5, 1832, ch. 65, 4 Stat. L. 503.

The scope of the Act of April 5, 1832, is expressly confined to such public lands as might be "offered at private sale," after the

first day of May then next, and cannot by any just latitude of construction be carried back to embrace pre-emptions under the Act of 1830. (1837) 3 Op. Atty-Gen. 211.

Sec. 2355. [*Private sales, proceedings in.*] Every person making application at any of the land-offices of the United States for the purchase at private sale of a tract of land shall produce to the register a memorandum in writing, describing the tract, which he shall enter by the proper number of the section, half-section, quarter-section, half quarter-section, or quarter quarter-section, as the case may be, and of the township and range, subscribing his name thereto, which memorandum the register shall file and preserve in his office. [R. S.]

Act of Feb. 24, 1810, ch. 11, 2 Stat. L. 556.

Erroneous rejection of application. — Where a party made his application in due form and tendered the money to purchase a fractional section and the register erroneously rejected the application, whereupon the applicant tendered the money to the treasurer of the United States in payment for the land,

which the treasurer refused, it was held that the application ought to have been received and entered. A failure to appeal to the commissioner of the general land office from the refusal of the register to enter the application did not amount to an abandonment of the application. (1851) 5 Op. Atty-Gen. 476.

Sec. 2356. [*No credit on sales of public lands.*] Credit shall not be allowed for the purchase-money on the sale of any of the public lands, but every purchaser of land sold at public sale shall, on the day of purchase, make complete payment therefor; and the purchaser at private sale shall produce to the register of the land-office a receipt from the Treasurer of the United States, or from the receiver of public moneys of the district, for the amount of the purchase-money on any tract, before he enters the same at the land-office; and if any person, being the highest bidder at public sale for a tract of land, fails to make payment therefor on the day on which the same was purchased, the tract shall be again offered at public sale on the next day of sale, and such person shall not be capable of becoming the purchaser of that or any other tract offered at such public sales. [R. S.]

Act of April 24, 1820, ch. 51, 3 Stat. L. 566.

Public lands were formerly sold on credit at not less than two dollars an acre, but as the credit system worked badly it was abandoned in 1820 and the price was reduced to one dollar and twenty-five cents per acre. *Eldred v. Sexton*, (1873) 19 Wall. (U. S.) 198; *Baldwin v. Boyd*, (1885) 18 Neb. 444.

In April, 1820, the system of credit sales was abandoned, and for the purpose of collecting the debts then owing to the government for lands previously sold, Congress passed an Act, on the 2d of March, 1821, allowing to all purchasers previous to the 1st of July, 1820, different periods of credit for the amount still owing, or a discount of thirty-seven and a half per cent. to all such as should pay in cash. The penalty for neglecting or refusing to comply with the provisions of this Act, on or before the 30th of September, 1821, was an absolute forfeiture of all title, and the land reverted to the United States, subject to be sold as prescribed by the Act of April 24, 1820. By subsequent acts, the provisions of the Act of March

2, 1821, were revived and extended to different periods, and the penalty in each Act was a forfeiture of all title. *Kirkby v. Fogleman*, 16 La. 277. See also *Creps v. Wilkinson*, (1839) 9 Ohio 200.

Receiver may not purchase on credit. — Under the Act of April 24, 1820 (3 Stat. L. 566), a receiver is prohibited from making an entry of public lands in his own name on credit. The Act of Congress forbidding the sale of public lands on credit makes no exception in favor of any officer. The officers must purchase upon the terms prescribed. *U. S. v. Boyd*, (1847) 5 How. (U. S.) 29.

Land sold on the last day of the sale, but not paid for, is not subject to be sold at private sale, by entry at the land office, either by the former purchaser or by any other person, until the same has been again exposed to public sale in the manner pointed out by the fourth section of the Act of 1820, and at such time as the President of the United States shall by his proclamation direct; and, consequently, the receiver does not act legally, and faithfully execute his duty, in permitting

such an entry to be made. (1829) 2 Op. Atty-Gen. 200.

Authenticating purchases. — At various times since the passage of the Act of April 24, 1820, the modes of conducting sales at the different land offices of the United States have been prescribed by the commissioner. The regulations of the general land office of 1831 and the above named Act prescribed the mode of authentication by the registers and receivers of purchases of the public lands. *Bell v. Hearne*, (1856) 19 How. (U. S.) 252.

A mistake in inserting the wrong name of the purchaser will not defeat his rights. Where a receipt was given by the receiver made out to John Bell, and two certificates of purchase were made out by the register, one to John Bell and one to James Bell, and it appeared that the latter was a mistake which, however, was legally corrected by the commissioner of the general land office, it was held that the commissioner had the right to make the correction even though a patent had issued to James Bell, which had been reclaimed from the register's office and returned to the general land office to be canceled. *Bell v. Hearne*, (1856) 19 How. (U. S.) 252.

Patent reciting compliance with Act. — A recital in a patent that a named party "has deposited in the general land office of the United States a certificate of the register of

the land office at Lincoln, Nebraska, whereby it appears that full payment has been made by said [named party] according to the provisions of the Act of Congress of the 24th of April, 1820, entitled 'An Act making further provision for the sale of the public lands,' was held to show simply that the provision of the above-named statute had been complied with, and not to show that the patent was issued under the Act of 1820. *Baldwin v. Boyd*, (1885) 18 Neb. 444.

The term "entry," as applied to appropriations of lands, was probably borrowed from the state of Virginia, where the term was used in that sense at a very remote period. It means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim in the office of an officer known in the legislation of several states by the epithet of an entry-taker, and corresponding very much in his functions with the registers of land offices, under the Acts of the United States. In the natural progress of language, the term has been introduced into the laws of the United States; and, by reference to those laws, the meaning of the term will be found to be distinctly confined to the appropriation of lands under the laws of the United States at private sale. *Chotard v. Pope*, (1827) 12 Wheat. (U. S.) 587.

Sec. 2357. [*Price of lands \$1.25 per acre.*] The price at which the public lands are offered for sale shall be one dollar and twenty-five cents an acre; and at every public sale, the highest bidder, who makes payment as provided in the preceding section, shall be the purchaser; but no land shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents an acre; and all the public lands which are hereafter offered at public sale, according to law, and remain unsold at the close of such public sales, shall be subject to be sold at private sale, by entry at the land-office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry: *Provided*, That the price to be paid for alternate reserved lands, along the line of railroads within the limits granted by any act of Congress, shall be two dollars and fifty cents per acre. [R. S.]

Act of April 24, 1820, ch. 51, 3 Stat. L. 566.

Effect of price as measure of damages for breach of Indian treaty. — By the Act of April 24, 1820, ch. 51, 3 Stat. L. 566, all the public lands of the United States were made open to entry and sale at one dollar and twenty-five cents an acre. The United States in 1831 obligated itself in a treaty with the Shawnees to expose to public sale to the highest bidder lands ceded to the United States by the Shawnees. The United States disposed of a part of the lands at private sale, which constituted a breach of trust, but the measure of damages for the violation of the treaty stipulation was held to be the difference between the amounts realized and the price fixed by the statute. *U. S. v. Blackfeather*, (1894) 155 U. S. 180.

Act of April 24, 1820, as affecting warrants under Act of March 3, 1801. — A warrant which, in strict conformity with the Act of March 3, 1801, stipulated, in the alternative,

that certain lands might be received at the rate of two dollars per acre, in payment of any lands lying on the west side of the Mississippi, must be received at that rate. Congress did not intend, by the Act of the 24th of April, 1820, "making further provision for the sale of the public lands," to affect the value of such a warrant; nor could this be done without a violation of the public faith regularly pledged. (1822) 1 Op. Atty-Gen. 536.

Unoffered and offered lands. — After the passage of the Act of April 24, 1820, ch. 51, 3 Stat. L. 566, the public lands came to be spoken of as "unoffered lands" or those which had not been exposed to public sale, and "offered lands" or those which had been so exposed and remained unsold. *Northern Pac. R. Co. v. De Lacey*, (1899) 174 U. S. 623. The practice was established not to allow private entries until the land had been previously offered at public sale. *Chotard v. Pope*, (1827) 12 Wheat. (U. S.) 587; *John-*

son v. Towsley, (1871) 13 Wall. (U. S.) 88; Eldred v. Sexton, (1873) 19 Wall. (U. S.) 189; (1829) 2 Op. Atty.-Gen. 200; (1856) 8 Op. Atty.-Gen. 247; (1843) 4 Op. Atty.-Gen. 167. See Act of May 18, 1898, ch. 344, 30 Stat. L. 418, *infra*, p. 335.

Operation of proviso of Act on subsequent legislation.—Up to the time of the revision of the statutes of the United States it was the settled policy of the government to hold for sale, at a price not less than double the minimum price of public lands, all alternate reserved sections on the lines of railroads constructed with the aid of the United States. This policy was recognized in section 2357 of the Revised Statutes. The proviso of this section applies to all alternate reserved lands described in any Act of Congress, and makes no exception of any lands of that class on account of their fitness or unfitness, in their natural condition, for agricultural purposes. Thus the law stood at the date of the Act of March 3, 1877, ch. 107, 19 Stat. L. 377, providing for the sale of "desert lands" in certain states and territories, which latter Act did not include alternate sections reserved to the United States, along the lines of railroads for the construction of which Congress made land grants. The Act of 1877

did not supersede or modify the proviso of section 2357 of the Revised Statutes, and, therefore, did not embrace alternate sections reserved to the United States by a railroad land grant. As a result, prior to the passage of the Act of 1891, lands, although within the general description of desert lands, could not properly be disposed of at less than two dollars and fifty cents per acre. Cases initiated under the original Act of 1877, but not completed by final proof until after the passage of the Act of 1891, were left by the latter Act—at least as to the price to be paid for the lands entered—to be governed by the law in force at the time the entry was made. *U. S. v. Healey*, (1895) 160 U. S. 136, *reversing* (1894) 29 Ct. Cl. 115. See also *U. S. v. Ingram*, (1899) 172 U. S. 327, *reversing* (1897) 32 Ct. Cl. 147.

Object of proviso.—The principal, if not the only, object of the requirement that the alternate reserved sections along the lines of land-grant railroads should not be sold for less than double the minimum price fixed for other public lands, was to compensate the United States for the loss of the sections given away by the government. *U. S. v. Healey*, (1895) 160 U. S. 136. See also *U. S. v. Ingram*, (1899) 172 U. S. 327.

An act relating to the public lands of the United States.

[Act of June 15, 1880, ch. 227, 21 Stat. L. 237.]

[SECS. 1, 2.] [*Temporary and expired.*]

SEC. 3. [*Alternate sections of railroad lands reduced to \$1.25.*] That the price of lands now subject to entry which were raised to two dollars and fifty cents per acre, and put in market prior to January, eighteen hundred and sixty one, by reason of the grant of alternate sections for railroad purposes is hereby reduced to one dollar and twenty-five cents per acre. [21 Stat. L. 238.]

Excess paid not recoverable in Court of Claims.—A party who without protest pays for public lands more than is required by law is not entitled to recover the excess in the

Court of Claims. *U. S. v. Edmondston*, (1901) 181 U. S. 500. See also *Shang v. U. S.*, (1901) 36 Ct. Cl. 466.

SEC. 4. [*Mineral lands excepted from provisions of act—trespassers.*] This act shall not apply to any of the mineral lands of the United States; and no person who shall be prosecuted for or proceeded against on account of any trespass committed or material taken from any of the public lands after March first, eighteen hundred and seventy-nine shall be entitled to the benefit thereof. [21 Stat. L. 238.]

"The first section of this Act relieved under conditions named certain trespassers upon public lands from proceedings by the United States for acts done prior to March 1, 1879. The second section relates to homestead en-

tries 'heretofore' made. The provisions of section 4 would seem more especially applicable to section 1, but as they apply in terms to the whole Act, they are here retained." *Compilers' note*, 1 *Supp. R. S.* 298.

[SEC. 1.] [*Withdrawal of lands from private entry.*] That from and after the passage of this act no public lands of the United States, except those in the State of Missouri shall be subject to private entry. [25 Stat. L. 854.]

This and section 4, following, are from the Act of March 2, 1889, ch. 381. For reference to entire Act, see *supra*, p. 315.

Section 8 of this Act (*supra*, p. 316) provides that nothing in the Act is to be "con-

strued as suspending, repealing or in any way rendering inoperative" the provisions of the Act of July 5, 1884, ch. 214, relating to the disposal of abandoned and useless military reservations. See *infra*, div. XIV.

SEC. 4. [*Price of forfeited railroad lands, and adjacent lands.*] That the price of all sections and parts of sections of the public lands within the limits of the portions of the several grants of lands to aid in the construction of railroads which have been heretofore and which may hereafter be forfeited, which were by the act making such grants or have since been increased to the double minimum price, and, also, of all lands within the limits of any such railroad grant, but not embraced in such grant lying adjacent to and coterminous with the portions of the line of any such railroad which shall not be completed at the date of this act, is hereby fixed at one dollar and twenty-five cents per acre. [25 Stat. L. 834.]

See note to section 1, *supra*.

An Act To abolish the distinction between offered and unoffered lands, and for other purposes.

[Act of May 18, 1898, ch. 344, 30 Stat. L. 418.]

[SEC. 1.] [*Distinction between offered and unoffered lands abolished.*] That in cases arising from and after the passage of this Act the distinction now obtaining in the statutes between offered and unoffered lands shall no longer be made in passing upon subsisting preemption claims, in disposing of the public lands under the homestead laws, and under the timber and stone law of June third, eighteen hundred and seventy-eight, as extended by the Act of August fourth, eighteen hundred and ninety-two, but in all such cases hereafter arising the land in question shall be treated as unoffered, without regard to whether it may have actually been at some time offered or not. [30 Stat. L. 418.]

SEC. 2. [*Private sale of lands in Missouri.*] That all public lands within the State of Missouri shall hereafter be subject to disposal at private sale in the manner now provided by law for the sale of lands which have been publicly offered for sale, whether such lands have ever been offered at public sale or not: *Provided*, That the actual settlers shall have a preference right, under such rules and regulations as the Secretary of the Interior may prescribe. [30 Stat. L. 418.]

SEC. 2358. [*Public lands may be offered for sale in such proportions as the President chooses.*] Whenever the President is authorized to cause the public lands, in any land-district, to be offered for sale, he may offer for sale, at first, only a part of the lands contained in such district, and at any subsequent time or times he may offer for sale in the same manner any other part, or the remainder of the lands contained in the same. [R. S.]

Act of March 31, 1808, ch. 40, 2 Stat. L. 479.

SEC. 2359. [*Advertisement of sales.*] The public lands which are exposed to public sale by order of the President shall be advertised for a period of not less than three nor more than six months prior to the day of sale, unless otherwise specially provided. [R. S.]

Act of June 28, 1834, ch. 102, 4 Stat. L. 702.

SEC. 2. [*Proclamation of sale of lands — publication.*] That all executive proclamations relating to the sales of Public Lands shall be published in only one newspaper, the same to be printed and published in the State or Territory where the lands are situated, and to be designated by the Secretary of the Interior. [19 Stat. L. 221.]

This is from the Act of Jan. 12, 1877, ch. 18, "An Act providing for the sale of saline lands." See MINERAL LANDS, MINES, AND MINING, vol. 5, p. 48.

Sec. 2360. [*Duration of sales.*] The public sales of lands shall, respectively, be kept open for two weeks, and no longer, unless otherwise specially provided by law. [R. S.]

Act of April 24, 1820, ch. 51, 3 Stat. L. 567.

Sec. 2361. [*Several certificates issued to two or more purchasers of same section.*] Where two or more persons have become purchasers of a section or fractional section, the register of the land-office of the district in which the lands lie shall, on application of the parties, and a surrender of the original certificate, issue separate certificates, of the same date with the original, to each of the purchasers, or their assignees, in conformity with the division agreed on by them; but in no case shall the fractions so purchased be divided by other than north and south, or east and west, lines; nor shall any certificate issue for less than eighty acres. [R. S.]

Act of May 23, 1828, ch. 71, 4 Stat. L. 287.

Sec. 2362. [*Purchase-money refunded where sale cannot be confirmed.*] The Secretary of the Interior is authorized, upon proof being made, to his satisfaction, that any tract of land has been erroneously sold by the United States, so that from any cause the sale cannot be confirmed, to repay to the purchaser, or to his legal representatives or assignees, the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated. [R. S.]

Act of Jan. 12, 1825, ch. 5, 4 Stat. L. 80;
Act of Feb. 28, 1859, ch. 64, 11 Stat. L. 387.

Exclusiveness of relief — rights of assignees. — Notwithstanding the above section, actions may be maintained in the national courts, against the government of the United States, to recover the purchase price paid under void entries of public lands, under the provisions of the Act of Congress of March 3, 1887, which authorizes suits against the United States. Such actions cannot, however, be maintained by assignees of the parties who made the void entries, as assignments of all claims against the government are declared void by sec. 3477, R. S., unless made with prescribed formalities after the issuance of warrants to pay the claims. *Emmons v. U. S.*, (1890) 42 Fed. Rep. 26. See also *U. S. v. Foreman*, (1897) 5 Okla. 237.

Scope and purpose of Act of Jan. 12, 1825. — Where there is a deficiency in the quantity of land purchased, and where an entry has been made of land to which another had a pre-emption title, these situations fall strictly within the terms of the Act of Jan. 12, 1825. The general purpose of this Act was to assure purchasers a prompt return of money paid by them for lands to which the United States could give no title.

Whether that disability proceeds from one or another cause is unimportant. All that a purchaser claiming under the provisions of this law is required to show is that the land for which his money has been paid into the public treasury was erroneously sold by the United States. The money thus paid being received without consideration, or upon a consideration which has failed, the principle of equity incorporated into this enactment entitles the party paying it to its return. In reference to cases of error arising out of miscalculations of the amounts to be paid, money thus paid is never properly in the treasury of the United States. It is paid and received by mutual mistake; and as long as it remains in the hands of the receiving officer he should correct the error. After the money has found its way into the treasury, however, like all other money, it should be withdrawn in strict fulfilment of the requirements of the law, which the administrative power of the executive department of the government cannot control. (1843) 4 Op. Atty.-Gen. 227.

The only relief of a purchaser of previously sold land, under the Act of Jan. 12, 1825, ch. 5, 4 Stat. L. 80, is a repayment of the money paid under his void entry and pur-

chase, and a change of entry cannot be had. The Act of 1825 is not supplementary or amendatory of any previous Act, but is substantive and independent, and provides for a class of cases not embraced by any other law. *Carman v. Johnson*, (1859) 29 Mo. 84.

The Act of Jan. 12, 1825, did not embrace all sales erroneously made, but only such as were erroneous by reason of a defect of title in the United States. This statute did not embrace a case of mere irregularity, in which attempts to dispose of a portion of the public

domain have been made by persons having no authority to sell. The department cannot refund simply because it is just that the money should be repaid or that it is in the hands of the government by mistake or without consideration. (1843) 4 Op. Atty-Gen. 253. See also (1837) 3 Op. Atty-Gen. 253, holding that the Act embraces the single category of failure of consideration by reason of want of title to a whole or a part of the land sold.

Sec. 2363. [*Refunding in certain cases, how done.*] Where any tract of land has been erroneously sold, as described in the preceding section, and the money which was paid for the same has been invested in any stocks held in trust, or has been paid into the Treasury to the credit of any trust-fund, it is lawful, by the sale of such portion of the stocks as may be necessary for the purpose, or out of such trust-fund, to repay the purchase-money to the parties entitled thereto. [R. S.]

Act of Feb. 28, 1859, ch. 64, 11 Stat. L. 388.

Sec. 2364. [*Minimum price, how fixed when reservations sold.*] Whenever any reservation of public lands is brought into market, the Commissioner of the General Land-Office shall fix a minimum price, not less than one dollar and twenty-five cents per acre, below which such lands shall not be disposed of. [R. S.]

Act of July 2, 1864, ch. 221, 13 Stat. L. 374.

Conflict between state and individual.—The Act of April 24, 1820, provided for the case "where two or more persons shall apply for the purchase at private sale of the same tract at the same time." The condition of a state in making a selection in execution of a general floating grant, under an Act which granted lands to it in aid of a canal, is not that of a person applying for the purchase of a tract of land at private sale, and, therefore, a conflict in such a case, between the

state and an individual, as to a section of the public domain, does not come within the Act. Attorney-General Cushing said: "I do not mean to say that grants of public land to a state for railroad, canal, or other purposes, stand upon any higher right than grants to individual purchasers for money. That is not the point. It is not a question of higher rights or of lower ones, but of different ones, or rather of rights regulated and acquired by distinct provisions of law, each with its distinct relations and consequences." (1856) 8 Op. Atty-Gen. 252.

Sec. 2365. [*Highest bidder, when preferred in private sales.*] Where two or more persons apply for the purchase, at private sale, of the same tract, at the same time, the register shall determine the preference, by forthwith offering the tract to the highest bidder. [R. S.]

Act of April 24, 1820, ch. 51, 3 Stat. L. 567.

Sec. 2366. [*What coins receivable in payment for public lands.* See *MONEYS PAYABLE TO OR BY OR RECEIVABLE BY UNITED STATES*, vol. 5, p. 73.]

Sec. 2367. [*Lands in California subject to private entry and withdrawn, how to be opened to entry.*] Wherever lands in California subject to private entry have been or are hereafter withdrawn from market for any cause, such lands shall not thereafter be held subject to private entry until they have first been open for at least ninety days to homestead and pre-emption settlers, and again offered at public sale. [R. S.]

Act of July 15, 1870, ch. 292, 16 Stat. L. 304.

Sec. 2368. [*Certain lands located in good faith by claims arising under treaty of Sept. 30, 1854, may be purchased, etc.*] The Secretary of the Interior is authorized to permit the purchase, with cash or military bounty-land warrants, of such lands as may have been located with claims arising under the seventh clause of the second article of the treaty of September thirty, eighteen hundred and fifty-four, at such price per acre as he deems equitable and proper, but not at a less price than one dollar and twenty-five cents per acre, and the owners and holders of such claims in good faith are also permitted to complete their entries, and to perfect their titles under such claims upon compliance with the terms above mentioned; but it must be shown to the satisfaction of the Secretary of the Interior that such claims are held by innocent parties in good faith, and that the locations made under such claims have been made in good faith and by innocent holders of the same. [R. S.]

Act of June 8, 1872, ch. 357, 17 Stat. L. 340.

The purchase of land located outside of the territory ceded to the United States by the treaty of Sept. 30, 1854, between the United States and the Chippewa Indians of Lake Superior and the Mississippi, was authorized by the above section. *Fee v. Brown*, (1896) 162 U. S. 602, *affirming* (1892) 17 Colo. 510.

Where a patent was void for want of

authority in the commissioner of Indian affairs to issue the Chippewa scrip on which the title was founded, a subsequent transferee and claimant of the land in good faith was held to be within the Act of 1872, and a decision by the secretary on the facts as to the merits of the case was held to be final and not subject to review by the courts. *Pugsley v. Brown*, (1888) 35 Fed. Rep. 688.

Sec. 2369. [*Mistakes in entry of lands, provisions for.*] In every case of a purchaser of public lands, at private sale, having entered at the land-office, a tract different from that he intended to purchase, and being desirous of having the error in his entry corrected, he shall make his application for that purpose to the register of the land-office; and if it appears from testimony satisfactory to the register and receiver, that an error in the entry has been made, and that the same was occasioned by original incorrect marks made by the surveyor, or by the obliteration or change of the original marks and numbers at corners of the tract of land; or that it has in any otherwise arisen from mistake or error of the surveyor, or officers of the land-office, the register and receiver shall report the case, with the testimony, and their opinion thereon, to the Secretary of the Interior, who is authorized to direct that the purchaser is at liberty to withdraw the entry so erroneously made, and that the moneys which have been paid shall be applied in the purchase of other lands in the same district, or credited in the payment for other lands which have been purchased at the same office. [R. S.]

Act of March 3, 1819, ch. 98, 3 Stat. L. 526.

Mistake in application and certificates of register.—In *Widdicombe v. Childers*, (1888) 124 U. S. 400, the grantor of the defendant purchased at the proper land office the southeast quarter of a section; but the register by mistake described it in the application as the southwest quarter, and the entry in the plat book showed the purchase and sale of the southeast quarter. The plaintiff, with full knowledge of these facts, afterwards located and obtained a patent for the southeast quarter. It was held that he was a purchaser in bad faith, and that his legal title, though good as against the United States, was subject to the superior equities of the defendant and those claiming under him. The court said: "There cannot be a doubt that if the mistake in the written application and in the certificates of the register and receiver had been discovered before

the patent was issued, * * * it would have been corrected in the land office upon proper application in that behalf. The error was one which arose from the mistake of the register, one of the officers of the local land office, and comes directly within the provisions of section 2369 of the Revised Statutes." See also *Godkin v. Cohn*, (C. C. A. 1897) 80 Fed. Rep. 458.

Act of 1819 and those following explained.—There is no authority under the Act of 1819 for refunding money for land erroneously entered. Instead of providing for the refunding of money, it provides that the purchaser may withdraw the entry erroneously made, and the money which has been paid shall be applied in the purchase of other lands in the same district, or credited on other lands previously purchased at the same office. What distinguishes this Act from the Acts following is that the errors must be such as originate with the surveyor or land

officers; and that, if the purchaser wishes the mistake corrected, he may have it done on condition that the purchase money shall be applied to other lands. The distinguishing feature of the Act of 1824 is that it provides for errors not occasioned by any act of the surveyor or land officers. Another distinction between this and the other Acts is that, upon the correction of the erroneous entry, the payment is to be transferred to the tract intended to have been entered, so that, under this Act, if an erroneous entry has been made without any agency of the officers, the purchaser, if he wishes it corrected, may have it done by transferring the payment as before stated, but is not entitled to have the money refunded. It is

very obvious that there is nothing in any of the Acts on the subject that authorizes a change of the entry of one tract to another, unless the party has made a mistake in his numbers at the time of entering, and establishes satisfactorily to the land department that he intended to enter the tract to which he desires the change to be made. *Carman v. Johnson*, (1859) 29 Mo. 84.

Only entries made by purchasers are contemplated. — The provisions of the Acts of March 3, 1819, May 18 [24], 1824, and May 24, 1828, contemplate, exclusively, entries made by purchasers, by directing the application of the money paid on the entry, and do not include entries made by Canadian volunteers. (1830) 2 Op. Atty-Gen. 341.

Sec. 2370. [*Mistakes in patent lands.*] The provisions of the preceding section are declared to extend to all cases where patents have issued or may hereafter issue; upon condition, however, that the party concerned surrenders his patent to the Commissioner of the General Land-Office, with a relinquishment of title thereon, executed in a form to be prescribed by the Secretary of the Interior. [R. S.]

Act of May 24, 1828, ch. 96, 4 Stat. L. 301.

Sec. 2371. [*Mistakes in location of warrants.*] The provisions of the two preceding sections are made applicable in all respects to errors in the location of land-warrants. [R. S.]

Act of March 3, 1853, ch. 147, 10 Stat. L. 257.

Sec. 2372. [*Error in entry by mistake of numbers, proceedings upon.*] In all cases of an entry hereafter made, of a tract of land not intended to be entered, by a mistake of the true numbers of the tract intended to be entered, where the tract, thus erroneously entered, does not, in quantity, exceed one half-section, and where the certificate of the original purchaser has not been assigned, or his right in any way transferred, the purchaser, or, in case of his death, the legal representatives, not being assignees or transferees, may, in any case coming within the provisions of this section, file his own affidavit, with such additional evidence as can be procured, showing the mistake of the numbers of the tract intended to be entered, and that every reasonable precaution and exertion had been used to avoid the error, with the register and receiver of the land-district within which such tract of land is situated, who shall transmit the evidence submitted to them in each case, together with their written opinion, both as to the existence of the mistake and the credibility of each person testifying thereto, to the Commissioner of the General Land-Office, who, if he be entirely satisfied that the mistake has been made, and that every reasonable precaution and exertion [*sic*] had been made to avoid it, is authorized to change the entry, and transfer the payment from the tract erroneously entered, to that intended to be entered, if unsold; but, if sold, to any other tract liable to entry; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize any such change of entry; nor shall anything herein contained affect the right of third persons. [R. S.]

Act of May 24, 1824, ch. 138, 4 Stat. L. 31.

Intended land must be unsold at date of transfer. — The above section authorizes a transfer to the tracts intended only if they were unsold at the date of the transfer. A purchaser of those tracts does not take charged with notice of a prior application to

make the transfer, and subject to its results. *Manuel v. Fabyanski*, (1890) 44 Minn. 71. It was also held in this case that certain papers and transactions in the land office did not constitute an application under the above section to transfer the entry to the tracts involved in the action.

Sec. 2373. [*Agreement and acts intended to prevent bids, penalty.*] Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders, or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both. [R. S.]

Act of March 31, 1830, ch. 48, 4 Stat. L. 392.

Object of statute.—In *Fackler v. Ford*, (1860) 24 How. (U. S.) 322, holding that one who agrees to sell public land which he expects to purchase at a public sale, cannot thereafter plead his fraud in obtaining title, to defeat a decree of specific performance, the court explained the Act of March 31, 1830, as follows: "The fourth section is intended to protect the government and punish all persons who enter into combinations or conspiracies to prevent others from bidding at the sales, either by agreement not to do so, or by intimidation, threats, or violence." See also *Ellis v. Mosier*, (1849) 2 Greene (Iowa) 246.

An agreement whereby one purchases for

the benefit of others is not prohibited where there is no agreement calculated to prevent competition. *Switzer v. Skiles*, (1846) 8 Ill. 529, 44 Am. Dec. 723.

The employment of an agent to purchase at a stipulated price is not unlawful. *Pearsons v. Lee*, (1835) 2 Ill. 193.

Agreement need not be direct.—Under the Act of March 31, 1830, although the agreement must be positive, it need not necessarily be direct. *Stannard v. McCarthy*, (1841) Morr. (Iowa) 124.

The government is the only party that can object to an agreement which tends to prevent bidding, especially where no one else is injured by the agreement. *Easley v. Kelom*, (1871) 14 Wall. (U. S.) 279; *Root v. Shields*, (1868) Woolw. (U. S.) 340.

Sec. 2374. [*Agreements to pay premium to purchasers at public sales.*] If any person before, or at the time of the public sale of any of the lands of the United States, enters into any contract, bargain, agreement, or secret understanding with any other person, proposing to purchase such land, to pay or give to such purchasers for such land a sum of money or other article of property, over and above the price at which the land is bid off by such purchasers, every such contract, bargain, agreement, or secret understanding, and every bond, obligation, or writing of any kind whatsoever, founded upon or growing out of the same, shall be utterly null and void. [R. S.]

Act of March 31, 1830, ch. 48, 4 Stat. L. 392.

Object of statute.—The purpose of this law is to protect those who propose to purchase lands at the public sales, from extortion. *Fackler v. Ford*, (1860) 24 How. (U. S.) 322.

Agreements not within statute.—Where parties were in possession of unsurveyed public lands and executed an agreement to purchase the lands when surveyed and offered for sale, and thereafter to mortgage the same to a creditor, the court held that such an agreement was not a violation of

the Act of March 31, 1830 (4 Stat. L. 392). *Wright v. Shumway*, (1853) 1 Biss. (U. S.) 23, 30 Fed. Cas. No. 18,093.

M. had a claim and valuable improvements on public lands. E. agreed to pay two hundred dollars for one-half of the claim, and M. intrusted the two hundred dollars to E. as agent, to purchase for him his remaining portion of the land at the public sale, with the understanding that E. should deed to M. his portion of the purchase when perfected. This agreement was held not to violate the fifth section of the Act of March 31, 1830. *Ellis v. Mosier*, (1849) 2 Greene (Iowa) 246.

Sec. 2375. [*Recovery of premiums paid to purchasers at public sales.*] Every person being a party to such contract, bargain, agreement, or secret understanding, who pays to such purchaser any sum of money or other article of value, over and above the purchase-money of such land, may sue for and recover such excess from such purchaser in any court having jurisdiction of the same. [R. S.]

Act of March 31, 1830, ch. 48, 4 Stat. L. 392.

Sec. 2376. [*Discovery of agreements to pay premium by bill in equity.*]

If the party aggrieved have no legal evidence of such contract, bargain, agreement, or secret understanding, or of the payment of the excess, he may, by bill in equity, compel such purchaser to make discovery thereof; and if in such case the complainant shall ask for relief, the court in which the bill is pending may proceed to final decree between the parties to the same; but every such suit either in law or equity shall be commenced within six years next after the sale of such land by the United States. [R. S.]

Act of March 31, 1830, ch. 48, 4 Stat. L. 392.

Necessary allegations of bill.—A bill brought with reference to the above section must allege and show that the contract is

prohibited by the statute and that the complainant has no legal evidence of the agreement. *Gale v. Cutler*, (1842) 1 Pinn. (Wis.) 253.

Secs. 2377–2379. [See *infra*, XVI. “*Reservations and Grants for Public Purposes — School Lands.*”]**[VIII. RESERVATION AND SALE OF TOWN SITES ON THE PUBLIC LANDS.]****Sec. 2380.** [*Town sites to be reserved.*]

The President is authorized to reserve from the public lands, whether surveyed or unsurveyed, town-sites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centers of population. [R. S.]

Act of March 3, 1863, ch. 80, 12 Stat. L. 754.

Sections 2380–2394 constitute chapter 8 of title 32 of the Revised Statutes, entitled as above.

Entry and disposal of lands of abandoned military reservations under town-site laws. See *infra*, div. XIV.

Not applicable to Indian reservations.—

Land reserved for tribes of Indians is not a part of “the public lands,” and is not subject to the Acts of Congress relating to town sites. *King v. McAndrews*, (C. C. A. 1901) 111 Fed. Rep. 869.

Statute made applicable to Alaska.—The laws of the United States relating to town sites have been extended to Alaska. *Sawyer v. Van Hook*, (1900) 1 Alaska 108.

Sec. 2381. [*Reservations to be surveyed into lots.*]

When, in the opinion of the President, the public interests require it, it shall be the duty of the Secretary of the Interior to cause any of such reservations, or part thereof, to be surveyed into urban or suburban lots of suitable size, and to fix by appraisement of disinterested persons their cash value, and to offer the same for sale at public outcry to the highest bidder, and thence afterward to be held subject to sale at private entry according to such regulations as the Secretary of the Interior may prescribe; but no lot shall be disposed of at public sale or private entry for less than the appraised value thereof. And all such sales shall be conducted by the register and receiver of the land-office in the district in which the reservations may be situated, in accordance with the instructions of the Commissioner of the General Land-Office. [R. S.]

Act of March 3, 1863, ch. 80, 12 Stat. L. 754.

Sec. 2382. [*Town or city sites in public lands.*]

In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the recorder for the county in which the same is situated, a plat thereof, for not exceeding six hundred and forty acres, describing its exterior boundaries accord-

ing to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land-Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of an organized land-district, a similar map and statement shall be filed with the register and receiver, and at any time after the filing of such map, statement, and testimony in the General Land-Office it may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property. But any actual settler upon any one lot, as above provided, and upon any additional lot in which he may have substantial improvements shall be entitled to prove up and purchase the same as a pre-emption, at such minimum, at any time before the day fixed for the public sale. [R. S.]

Act of July 1, 1864, ch. 205, 13 Stat. L. 343.

Purpose of Act.—"Congress had in view two objects, to wit: first, to protect the equitable rights of those in the *bona fide* occupation of lots in towns already established, and to enable persons to acquire small parcels at a nominal price in towns thereafter to be located; second, to enable the inhabitants of the existing or proposed town to establish proper streets, blocks, and squares, adapted to the particular locality." *Jones v. Petaluma*, (1868) 36 Cal. 230; *Aleman v. Petaluma*, (1869) 38 Cal. 553.

This Act was evidently designed in aid and for the benefit and relief of such persons as, having settled upon the public lands, might desire to lay out and establish a town or city including their possessions, or having already laid out and established a town or city on unoccupied lands, and settled upon lots or municipal subdivisions within the boundaries thereof, to enable such occupants of town or city lots to procure a title thereto from the United States at a minimum price; and, further, to provide a means by which other parties desiring to purchase lots within the limits of an established city or town upon the public lands could procure a valid title thereto. Congress had in view the individual

interests of *bona fide* settlers upon small parcels of public lands, as well as the common interests of a community of persons so contiguously settled as to justify the establishment of a town or city, and did not intend the Act for the especial benefit of municipal organizations or corporations; and to so construe the law as to authorize under its sanction an appropriation of private property to public use without compensation, or an arbitrary confiscation of rights of property for the benefit of municipal associations or corporations, would be a manifest perversion of the leading object and purpose of the law. *Jones v. Petaluma*, (1869) 38 Cal. 397.

Decisions judicial in character and not subject to collateral attack.—Decisions under this section, both of law and fact, made by the proper officer or officers, are judicial in character and not subject to collateral attack. *King v. McAndrews*, (C. C. A. 1901) 111 Fed. Rep. 860.

Private property not to be taken without compensation.—A board of aldermen of a city has no authority, under this section, to lay out imaginary streets running through valuable improvements, and by that process to deprive citizens of their property without any compensation. *Virginia, etc., R. Co. v. Lynch*, (1878) 13 Nev. 92.

Sec. 2383. [When towns established upon unsurveyed lands, extension limits, how adjusted.] When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it

can be done without interference with rights which may be vested by sale; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases. [R. S.]

Act of July 1, 1864, ch. 205, 13 Stat. L. 344.

Sec. 2384. [*When transcript maps of town are not filed in twelve months, proceedings by Secretary of Interior.*] If within twelve months from the establishment of a city or town on the public domain, the parties interested refuse or fail to file in the General Land-Office a transcript map, with the statement and testimony called for by the provisions of section twenty-three hundred and eighty-two, it may be lawful for the Secretary of the Interior to cause a survey and plat to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by such provisions, with this exception, that they shall each be at an increase of fifty per centum on the minimum of ten dollars per lot. [R. S.]

Act of July 1, 1864, ch. 205, 13 Stat. L. 344.

Decisions judicial in character and not subject to collateral attack.—Decisions under this section, both of law and fact, made by

the proper officer or officers, are judicial in character and not subject to collateral attack. *King v. McAndrews*, (C. C. A. 1901) 111 Fed. Rep. 860.

Sec. 2385. [*Where size of lots or town plat vary from general rule.*] In the case of any city or town, in which the lots may be variant as to size from the limitation fixed in section twenty-three hundred and eighty-two, and in which the lots and buildings, as municipal improvements, cover an area greater than six hundred and forty acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim under the provisions of that section; but the minimum price of each lot in such city or town, which may contain a greater number of square feet than the maximum named in that section, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish. [R. S.]

Act of March 3, 1865, ch. 107, 13 Stat. L. 530.

Sec. 2386. [*Title to lots subject to mineral rights.*] Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town-lots to be acquired shall be subject to such recognized possession and the necessary use thereof; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States. [R. S.]

Act of March 3, 1865, ch. 107, 13 Stat. L. 530.

The provisions as to minerals and mineral claims are set out under MINERAL LANDS, MINES, AND MINING, vol. 5, p. 1.

Mineral rights cannot be acquired under this section, but are left subject to acquisition in the same manner as deposits outside of town sites. *Steel v. St. Louis Smelting, etc., Co.*, (1882) 106 U. S. 447; *Poire v. Wells*, (1882) 6 Colo. 406.

General purpose and effect of section.—“This statute was enacted at a time when it was the settled policy of the government not to sell its mineral lands, and when it was impossible for an individual to acquire title to such lands. Even then, when mineral veins were held and possessed by virtue of mere local rules and regulations, and when the title could not be acquired, the title to the

town lots under the Town-site Act were subject to the necessary possession and use of the mine owner. Even then, when the government did not propose to part with its title to the mineral lands, the possessory title to the mine, such as it was, is made superior to that of the lot owner under the Town-site Act. That Act gave the mine owner all the title he had, made the lot owner's title subject to it, and is not at all inconsistent with the Act of 1872 (R. S. U. S. sec. 2319), which opens the public mineral lands to exploration and purchase, and gives to the locator the full title when its terms have been complied with.” *Talbott v. King*, (1886) 6 Mont. 76. To the same effect is *Silver Bow Min., etc., Co. v. Clark*, (1885) 5 Mont. 378.

Valuable for its minerals.—Lands of which acquisition is prohibited, under this section, must be such land as is known at the time

to be valuable for its minerals; for there are vast tracts of public land in which minerals of different kinds are found, but not in such quantities as to justify the expenditure necessary to extract them. It is not to such land that the term "mineral," in the sense of the statute, is applicable. *Deffebach v. Hawke*, (1885) 115 U. S. 392.

The right to tunnel under a lot taken under

the Town-site Act, in order to reach a mineral vein which was known to exist at the time of the issuing of the town-site patent and is excluded from the operation of the patent, does not belong to the owner of the vein in the absence of any agreement by the owner to that effect supported by a valid consideration. *Dower v. Richards*, (1887) 73 Cal. 477.

Sec. 2387. [*Entry of town authorities in trust for occupants.*] Whenever any portion of the public lands have been or may be settled upon and occupied as a town-site, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land-office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated. [*R. S.*]

Act of March 2, 1867, ch. 177, 14 Stat. L. 541.

IN GENERAL.

Government's interest totally relinquished.—Under this statute the government totally relinquishes its connection with the land when the patent issued to the local authority. *McDaid v. Oklahoma*, (1893) 150 U. S. 209; *Bockfinger v. Foster*, (1903) 190 U. S. 116; *Chisolm v. Weisse*, (1895) 2 Okla. 611.

"Corporate authorities" means the corporate authorities of a town, city, or village, in the commonly accepted meaning of those words, possessing and exercising the powers of a local or municipal government. *Clarke v. Roy*, (1866) 20 Wis. 478; *Perry v. Superior City*, (1870) 26 Wis. 64.

Duty of probate judge to make entry.—Whenever any public land of the United States has been settled upon and occupied as a town site, and the town is not incorporated, it is the duty of the probate judge, upon being furnished with entrance money, to enter such lands for the benefit of the occupants of the town site according to their respective interests. *McTaggart v. Harrison*, (1873) 12 Kan. 62.

Expenses of entering not a lien on trust property.—A mayor of a city desired to enter land under this statute for the benefit of the occupants, and upon his right to do so being contested, he employed counsel to assist him in the contest and they performed the services for which they were employed. He never entered the lands, but his successor in office did. It was held, in an action by the attorneys against the successor, for their fees, that the contract made by the first mayor did not bind his successor in office and that the attorneys' charges were not a lien on the trust estate vested in the successor for the benefit of the occupants. *Emmert v. De Long*, (1873) 12 Kan. 67.

Authority of municipality to employ coun-

sel.—A municipal corporation has authority to employ counsel in acquiring a town-site patent and to pay them reasonable compensation for their services, but a contract to pay counsel "the sum of ten dollars for each and every lot or parcel of lot actually sold and conveyed under and by virtue of said patent," is illegal and void, since the size of the lots or parcels of lots is in no way specified or made certain by the contract, and therefore the contract might charge the beneficiaries of the trust with unnecessary burdens and make the compensation of the attorney unreasonable and unconscionable. *Hayward v. Red Cliff*, (1894) 20 Colo. 33.

Evidence for identification.—*Town-site plats* are admissible to identify the lands. *Wilder v. St. Paul*, 12 Minn. 192; *Mankato v. Meagher*, 17 Minn. 265.

Oral evidence is also competent for the purpose of identification in an action involving the title to lands conveyed, but the plat itself should be produced, or the failure to produce it explained, before such oral evidence is admitted. *Murray v. Hobson*, (1887) 10 Colo. 66; *Hanlon v. Hobson*, (1897) 24 Colo. 284.

Parties.—In an action against a mayor of a municipal corporation for a demand or claim due out of the property held in trust for the occupants, all the trustees and *cestuis que trustent* should be made parties defendant. *Emmert v. De Long*, (1873) 12 Kan. 67.

NATURE OF TRUST AND TITLE AND AUTHORITY OF TRUSTEES.

Trust for occupants individually and collectively.—The trust provided for by this section is dual in its nature. It exists for the benefit of the occupants as individuals and also collectively as a community. *Martin v. Hoff*, (Ariz. 1901) 64 Pac. Rep. 445; *Clark v. Titus*, (1886) 2 Ariz. 147; *Denver v.*

Kent, (1871), 1 Colo. 336; Lockwitz v. Larson, (1898) 16 Utah 275; Newhouse v. Simino, (1892) 3 Wash. 648. See also Aspen v. Rucker, (1887) 10 Colo. 184; Ruud v. Jensen, (1892) 3 Wash. 785.

The title to occupied lots becomes vested in the trustee for the benefit of the occupants severally when he makes the entry. Jones v. Eureka Imp. Co., (1890) 53 Ark. 191; Winfield Town Co. v. Maris, (1873) 11 Kan. 128; Sherry v. Sampson, (1873) 11 Kan. 611; Man-kato v. Meagher, 17 Minn. 265; Goldberg v. Kidd, (1894) 5 S. Dak. 169; Eakin v. McCraith, (1882) 2 Wash. Ter. 112. See also Stringfellow v. Cain, (1878) 99 U. S. 610; Mallard v. Anderson, (1884) 36 La. Ann. 834.

Title to unoccupied lots.—The title to lots to which no valid claims are held by individuals, the trustees take in trust for the occupants of the town site collectively. Denver v. Kent, (1871) 1 Colo. 336; Aspen v. Rucker, (1887) 10 Colo. 184.

The trusteeship as to unoccupied lots continues until they are all finally sold in the manner provided by law. Hartman v. Smith, (1887) 6 Mont. 295.

Location and occupancy after entry.—The opinion has been expressed that vacant and unoccupied lands are subject to location and occupation by any person at any time prior to the issuance of the patent. Lechler v. Chapin, (1877) 12 Nev. 71, per Hawley, C. J. Compare Winfield Town Co. v. Maris, (1873) 11 Kan. 128; Leech v. Rauch, 3 Minn. 454; Castner v. Gunther, 6 Minn. 119; Lockwitz v. Larson, (1898) 16 Utah 275.

Estate vested in trustees and not in municipality.—The estate and trust powers become vested in the trustees and not in the municipality. Smith v. Pipe, (1877) 3 Colo. 187; Georgetown v. Glaze, (1877) 3 Colo. 234; Aspen v. Rucker, (1887) 10 Colo. 184; Burbank v. Ellis, (1878) 7 Neb. 156.

Bill by corporation to prevent abuse of trust.—It would seem, however, that a bill may be maintained by a corporation to correct or prevent an abuse of the trust which affects the interest of the beneficiaries. Denver v. Kent, (1871) 1 Colo. 336; Georgetown v. Glaze, (1877) 3 Colo. 234; Aspen v. Rucker, (1887) 10 Colo. 184.

Suit to protect title.—The probate judge is the trustee of an express trust and has authority to sue to protect his title as such. Hartman v. Smith, (1887) 6 Mont. 295.

Title passes to successor.—The purpose of the statute is to confer the estate upon the county judge or corporate authorities in their official capacity, and to limit it to the successor until the purposes of the trust are fully accomplished. Therefore a vacancy in the office occasions no difficulty. Smith v. Hill, (1891) 89 Cal. 122; Smith v. Pipe, (1877) 3 Colo. 187; Georgetown v. Glaze, (1877) 3 Colo. 230; Aspen v. Rucker, (1887) 10 Colo. 184.

Formation of new county from part of old county.—Where a new county is formed from a portion of an old county the probate judge of the new county becomes the successor of the old trustee in respect to those

lands which belong to the town sites falling within the territory of the new county. Whittlesey v. Hoppenny, (1888) 72 Wis. 140; Tucker v. Whittlesey, (1889) 74 Wis. 74.

Corporate authorities not successors of county judge.—When a town site, entered before incorporation by a county judge as trustee, becomes incorporated, the corporate authorities do not on that account succeed to the title of the original trustee. The title belongs to the successors in office of the county judge and they alone can convey the legal title. Wheeler v. Wade, (1891) 1 Colo. App. 66; Webber v. Petty, (1892) 2 Colo. App. 63; Rice v. Goodwin, (1892), 2 Colo. App. 267.

Decisions of trustees judicial in character.—The decision of all questions, under this section, whether of law or of fact, upon which depends the ultimate question whether the claimant of a town site is entitled to enter and to receive the patent for the land, is judicial in its nature, and impervious to collateral attack, and can only be assailed successfully by a direct proceeding in equity for that purpose. King v. McAndrews, (C. C. A. 1901) 111 Fed. Rep. 860; Larned v. Jenkins, (C. C. A. 1902) 113 Fed. Rep. 634; New Dunderberg Min. Co. v. Old, (C. C. A. 1897) 79 Fed. Rep. 598; Smith v. Pipe, (1877) 3 Colo. 187; Anderson v. Bartels, (1883) 7 Colo. 256; Poire v. Wells, (1882) 6 Colo. 406; Aspen v. Aspen Town, etc., Co., (1887) 10 Colo. 191; Chever v. Horner, (1887) 11 Colo. 68; Schnepel v. Mellen, (1878) 3 Mont. 118; Helena v. Albertose, (1889) 8 Mont. 499; Ming v. Foote, (1890) 9 Mont. 201, *overruling* Ming v. Truett, (1871) 1 Mont. 325, *reviewing and distinguishing* Edwards v. Tracy, (1874) 2 Mont. 49; Horsky v. Moran (1898) 21 Mont. 345; Mills v. Paynter, 1 Neb. 440; Tierney v. Cornell, (1874) 3 Neb. 267; Green v. Barker, (1896) 47 Neb. 934; Board of Education v. Mansfield, (S. Dak. 1903) 95 N. W. Rep. 286. Compare Rathbone v. Sterling, (1881) 25 Kan. 448.

Void deed attacked collaterally.—If the grantee was not in occupancy or entitled to occupancy of the land, the trustee had no authority to execute a deed to such grantee and it may be collaterally attacked as void and of no effect. Treadway v. Wilder, (1873) 9 Nev. 67. See also Poire v. Wells, (1882) 6 Colo. 406.

Acts and conveyances presumptively valid.—The rule that the acts and conveyances of officers of the land department are presumed to be valid, applies to town-site trustees. Poire v. Wells, (1882) 6 Colo. 406; Anderson v. Bartels, (1883) 7 Colo. 256; Setter v. Alvey, (1875) 15 Kan. 157; Marysville Invest. Co. v. Munson, (1890) 44 Kan. 491; Green v. Barker, (1896) 47 Neb. 934. See also Mathews v. Buckingham, (1879) 22 Kan. 166.

Finding of fact conclusive.—The findings of the trustees upon questions of fact are, as a rule, conclusive. Twine v. Carey, (1894) 2 Okla. 249; Bassett v. Mitchell, (1895) 3 Okla. 177; Myers v. Berry, (1895) 3 Okla. 612; King v. Thompson, (1895) 3 Okla. 644; Cummings v. McDermid, (1896) 4 Okla. 272.

See also *Carter v. Thompson*, (1894) 65 Fed. Rep. 329.

Deed cannot be attacked by stranger.—One who is a stranger to the title and in no way a beneficiary of the trust cannot question the validity of the acts of the trustees or the regularity of conveyances executed by them, nor can such person, by subsequent intrusion upon the possession of the holder of the legal title, acquire a right to question whether all the preliminaries required by law were complied with by the person holding the title from the trustee. *Anderson v. Bartels*, (1883) 7 Colo. 256; *Murray v. Hobson*, (1887) 10 Colo. 66; *Chever v. Horner*, (1887) 11 Colo. 68; *Hanlon v. Hobson*, (1897) 24 Colo. 284; *Laughlin v. Denver*, (1897) 24 Colo. 260; *Sherry v. Sampson*, (1873) 1 Kan. 611; *Marysville Invest. Co. v. Munson*, (1890) 44 Kan. 491; *Taylor v. Winona*, etc., R. Co., (1890) 45 Minn. 66; *Ming v. Foote*, (1890) 9 Mont. 201; *Holland v. Buchanan*, (1899) 19 Utah 11; *Tucker v. Chicago*, etc., R. Co., (1895) 91 Wis. 576. See also *Jackson v. Winfield Town Co.*, (1880) 23 Kan. 542; *Ready v. Kearsley*, (1866) 14 Mich. 215.

No vendor's lien for expenses of administering trust.—The trustee before conveying the title to an occupant has a right to demand from the occupant to whom the deed is made the purchase money and all the expenses of administering the trust; and it is only upon the payment of all these that the occupant is entitled to demand a deed. There is nothing in the statute which gives the trustee a lien for the expenses of administering his trust should he see fit to make a conveyance before they are paid, for a vendor's lien can exist only for unpaid purchase money. *Berry v. Ginaca*, (1880) 5 Fed. Rep. 475.

Controversy between claimants a federal question.—A controversy between two persons, both of whom claim to be *cestuis que trustent* under this section, presents a federal question and authorizes the removal of the cause. *Dunton v. Muth*, (1891) 45 Fed. Rep. 390.

Trustee without authority to dedicate streets.—A town-site trustee has no authority to dedicate, as a street, alley or public square, any portion of the town site in the possession of an occupant, and such an attempted dedication gives the public no interest as against the occupant. *Aleman v. Petaluma*, (1869) 38 Cal. 553; *Aspen v. Rucker*, (1887) 10 Colo. 184; *Pueblo v. Budd*, (1894) 19 Colo. 579; *Laughlin v. Denver*, (1897) 24 Colo. 255; *Winfield Town Co. v. Maris*, (1873) 11 Kan. 128; *Buffalo v. Harling*, (1892) 50 Minn. 551; *Edwards v. Tracy*, (1874) 2 Mont. 49; *Hall v. Ashby*, (1876) 2 Mont. 480, *affirmed* (1886) 119 U. S. 526; *Parchen v. Ashby*, (1883) 5 Mont. 68; *Helena v. Albertose*, (1889) 8 Mont. 499; *Guthrie v. Beamer*, (1895) 3 Okla. 652; *Bingham v. Walla Walla*, (1887) 3 Wash. Ter. 68.

OCCUPANCY AND RIGHTS OF OCCUPANTS.

Only occupants beneficiaries.—No claimant of lots comprising a portion of a town site

is a beneficiary of the trust, or entitled to a conveyance without proof of actual occupation, either by the claimant or his grantors, whether such claimant be an individual or a town company. *Clark v. Titus*, (1886) 2 Ariz. 147; *Ricks v. Reed*, (1862) 19 Cal. 551; *Biddick v. Kobler*, (1895) 110 Cal. 191; *Cook v. Rice*, (1873) 2 Colo. 131; *Clayton v. Spencer*, (1874) 2 Colo. 378; *Adams v. Binkley*, (1878) 4 Colo. 247; *Aspen v. Rucker*, (1887) 10 Colo. 184; *Aspen v. Aspen Town*, etc., Co., (1887) 10 Colo. 191; *Mitchell v. Arkell*, (1893) 3 Colo. App. 253; *Winfield Town Co. v. Maris*, (1873) 11 Kan. 128; *Sherry v. Sampson*, (1873) 11 Kan. 615; *Guffin v. Linney*, (1882) 26 Kan. 717; *Matter of Selby*, (1859) 6 Mich. 193; *Lech v. Rauch*, 3 Minn. 451; *Carson v. Smith*, 12 Minn. 560; *Treadway v. Wilder*, (1872) 8 Nev. 98, (1873) 9 Nev. 67; *Lechler v. Chapin*, (1877) 12 Nev. 72; *Lockwitz v. Larson*, (1898) 16 Utah 275; *Holland v. Buchanan*, (1899) 19 Utah 11. See also *Callahan v. James*, (Cal. 1902) 71 Pac. Rep. 104; *Morris v. Watson*, 15 Minn. 212.

The assigns of occupants stand in the position of their grantors and are entitled to a conveyance from the trustees. *Aspen v. Rucker*, (1887) 10 Colo. 184; *Aspen v. Aspen Town*, etc., Co., (1887) 10 Colo. 191; *Lechler v. Chapin*, (1877) 12 Nev. 72.

Purchasers of vacant or forfeited lots at sales regularly made in pursuance of statute, are entitled to conveyance from the trustee. *Aspen v. Rucker*, (1887) 10 Colo. 184.

Priority of occupancy determines the title where there are two or more claimants. *Sawyer v. Van Hook*, (1900) 1 Alaska 108; *Webber v. Petty*, (1892) 2 Colo. App. 63.

Who may be occupants.—A nonresident who is an occupant of the land he claims may be an occupant within the statute, as there is nothing in the statute which restricts the right of occupancy to residents. *Greiner v. Fulton*, (1891) 46 Kan. 405; *Hagar v. Wikoff*, (1895) 2 Okla. 580; *Downman v. Saunders*, (1895) 3 Okla. 227.

Municipal corporations.—A county or other municipal corporation may be an occupant within this section. *Blue Earth County v. St. Paul*, etc., R. Co., (1881) 28 Minn. 503. But see *Setter v. Alvey*, (1875) 15 Kan. 157.

A town company stands upon the same footing as individuals and its *bona fide* occupancy will be recognized and protected by the law. *Winfield Town Co. v. Maris*, (1873) 11 Kan. 128; *Marysville Invest. Co. v. Munson*, (1890) 44 Kan. 491; *Greiner v. Fulton*, (1891) 46 Kan. 405; *Mankato v. Meagher*, 17 Minn. 265.

Occupation for speculative purposes not allowed.—A town site cannot be entered for speculative purposes by individuals or corporations, but only by actual settlers engaged in building a town. An entry solely for the benefit of a corporation, where there are no *bona fide* individual claims, is not contemplated or allowed by the law. *Marysville Invest. Co. v. Holle*, (1897) 58 Kan. 773, *reversing* 5 Kan. App. 408. See also *Clark v. Titus*, (1886) 2 Ariz. 147; *Pascoe v. Green*, (1893) 18 Colo. 326; *Lechler v. Chapin*, (1877) 12 Nev. 71.

Requisites of occupancy.—The acts necessary to constitute possession of land must always depend upon the facts of each case, such as the character of the land, its locality, and the object and purpose for which it is taken up and claimed. But the acts must always be such as to subject the land to the will and control of the claimant and to notify the public that the land is claimed and occupied. *Garrard v. Silver Peak Mines*, (1897) 82 Fed. Rep. 578; *Ritter v. Lynch*, (1903) 123 Fed. Rep. 930; *Sawyer v. Van Hook*, (1900) 1 Alaska 108; *Price v. Brockway*, (1901) 1 Alaska 233; *Singer Mfg. Co. v. Tillman*, (Ariz. 1889) 21 Pac. Rep. 818; *Martin v. Hoff*, (Ariz. 1901) 64 Pac. Rep. 445; *Mankato v. Meagher*, 17 Minn. 265; *Schnepel v. Mellen*, (1878) 3 Mont. 118; *Eureka Min.*, etc., *Co. v. Way*, (1876) 11 Nev. 171; *Lechler v. Chapin*, (1877) 12 Nev. 72; *Jackson v. Thornton*, (1899) 8 Okla. 331.

Meaning of "settled upon and occupied."—"Settled upon" means taken possession of. It includes such an improvement of the lot by the erection of buildings or fences, or by actual residence thereon, or by such other acts of possession and improvement, as clearly and unmistakably show that it is *bona fide* the intention of the settler to take and hold possession of the lot, and that his possession and improvement is intended to be permanent, and for himself. "Occupied" also means taken and held in possession, and one who uses a lot and occupies it in good faith with buildings or other improvements or property, which show his intention to possess and claim it under the town-site law, although he may not reside upon it, can acquire title thereto." *Sawyer v. Van Hook*, (1900) 1 Alaska 108; *Osgood v. Donnelly*, (1901) 1 Alaska 385. See also *Stringfellow v. Cain*, (1878) 99 U. S. 610; *Hussey v. Smith*, (1878) 99 U. S. 20.

Necessity for retaining possession.—The widow and children of an occupant of land within a town site, have, under the town-site law, an inchoate interest after the death of the occupant, but they will lose such interest by failing to retain possession of the land until the entry by the municipal authorities. *West v. Child*, (1892) 8 Utah 223; *West v. Utah Nat. Bank*, (1893) 8 Utah 374.

Showing title to each lot claimed.—The possession of part of a separate and distinct tract by the owner or his tenants operates as an occupancy of the whole lot, but if the tract is cut up into distinct lots the claimant to such tract must show possession of all the lots. *Carter v. Ruddy*, (1897) 166 U. S. 493.

Actual residence not required.—Actual residence or the cultivation of the lands occupied is unnecessary. If the claimant be a *bona fide* occupant he is entitled to have his claim protected. *Greiner v. Fulton*, (1891) 46 Kan. 465; *Leech v. Rauch*, 3 Minn. 448.

Merely platting the land, without actual occupancy in person or by agent, is insufficient. *Carson v. Smith*, 12 Minn. 546. See also *Weisberger v. Tenny*, 8 Minn. 459.

Interest of occupants.—The interest of an occupant is inchoate, it is true, but it is nevertheless valuable; it is authorized by law

and may be defended against all encroachments from persons not having a paramount right. It is more than a mere right of possession, because in time it will ripen into a perfect title. *Davis v. Murphy*, 3 Minn. 119; *West v. Child*, (1892) 8 Utah 223; *West v. Utah Nat. Bank*, (1893) 8 Utah 374. See also *Gillett v. Gaffney*, (1877) 3 Colo. 351.

A right of disposition belongs to the occupant of a lot, so far as his possessory rights therein are concerned, before the lands are entered by the judge of the County Court. *Hussey v. Smith*, (1878) 99 U. S. 20, *reversing* (1873) 1 Utah 129; *Stringfellow v. Cain*, (1878) 99 U. S. 610, *reversing* (1876) 1 Utah 361; *Cannon v. Pratt*, (1878) 99 U. S. 619, *reversing* (1876) 1 Utah 347; *Hagar v. Wikoff*, (1895) 2 Okla. 580; *Guthrie v. Beamer*, (1895) 3 Okla. 602; *Clawson v. Wallace*, (1898) 16 Utah 300. See also U. S. v. *Tithing Yard*, 9 Utah 274.

Recording conveyance of interest.—A conveyance of the interest of an occupant is subject to recording acts. *Davis v. Murphy*, 3 Minn. 119; *Carson v. Smith*, 5 Minn. 78, 77 Am. Dec. 539.

Interest descendible.—The interest of a *bona fide* occupant is descendible. *Stringfellow v. Cain*, (1878) 99 U. S. 610; *Eversdon v. Mayhew*, (1884) 65 Cal. 163, (1890) 85 Cal. 1; *Gillett v. Gaffney*, (1877) 3 Colo. 351; *West v. Child*, (1892) 8 Utah 223; *West v. Utah Nat. Bank*, (1893) 8 Utah 374. See also *Coy v. Coy*, 15 Minn. 119.

Descendible interest lost by abandonment.—If the persons entitled by descent do not retain control of the land until a proper entry is made, the right will be lost. *Stringfellow v. Cain*, (1878) 99 U. S. 610; *West v. Child*, (1892) 8 Utah 223; *West v. Utah Nat. Bank*, (1893) 8 Utah 374.

Bare right of possession.—Although an occupant has become disqualified from ever obtaining title to the land on account of having entered the land in violation of an Act of Congress, nevertheless such an occupant, who has settled upon a government town site and made improvements thereon, and who has been unlawfully dispossessed while in the peaceable and actual occupancy of the buildings or lots, by the authorities of the city, which had no right to or interest in the lots, can maintain an action for damages for trespass. The peaceable possession of the premises, although without right, is sufficient title to maintain trespass against a wrongdoer who without a bare right enters upon such possession. *Oklahoma City v. Hill*, (1897) 6 Okla. 114.

Right vested at date of entry.—The trust vests an absolute right in the beneficiaries at the time of the entry. The rights of occupants relate back to that time and are to be determined as of that date. *Cook v. Rice*, (1873) 2 Colo. 131; *Clayton v. Spencer*, (1874) 2 Colo. 378; *Adams v. Binkley*, (1878) 4 Colo. 247; *Pascoe v. Green*, (1893) 18 Colo. 326; *Pueblo v. Budd*, (1894) 19 Colo. 587; *Winfield Town Co. v. Maris*, (1873) 11 Kan. 128; *Rathbone v. Sterling*, (1881) 25 Kan. 444; *Leech v. Rauch*, 3 Minn. 448; *Castner v. Gunther*, 6 Minn. 119; *Cast-*

ner v. Echard, 6 Minn. 149; Helena v. Albertose, (1889) 8 Mont. 499; Lechler v. Chapin, (1877) 12 Nev. 66; Guthrie v. Beamer, (1895) 3 Okla. 652; Lockwitz v. Larson, (1898) 16 Utah 275.

Meaning of term "entry."—By an "entry" under the Act is meant the filing of the application by the proper officer with the register of the land office, and proof of the performance of the conditions in respect to the settlement and occupancy of the town sites. Lockwitz v. Larson, (1898) 16 Utah 275.

Ownership.—The occupant of a lot at the time the entry of the town site by the county judge is made is its real owner. Goldberg v. Kidd, (1894) 5 S. Dak. 169; Cofield v. McClelland, (1872) 16 Wall. (U. S.) 334; Stringfellow v. Cain, (1878) 99 U. S. 610.

Rights not affected by government's failure to act.—"No delay on the part of the government in allowing the entry can affect the rights of those who were *bona fide* occupants at the time of the filing of the application and proof, or of those claiming through such occupants, provided the entry is ultimately made on the proof submitted with the application; for, if the entry were allowed on other proof submitted at a subsequent day, question might be made whether the conditions imposed by the Act had actually been performed on the prior day. Nor can the rights of the *cestui que trustent* be jeopardized by any delay on the part of the government to recognize them by proper evidence of title. The issuing of the final certificate and patent is not made a prerequisite, under the Act of 1867, to the establishment of the equitable rights of the occupants. Such certificate and patent do not confer the rights, although convenient, and probably necessary, to enforce them. They constitute the effect, but not the cause, and therefore a person who claims to have become an occupant of land on a town site after the date of filing the application, but before the issuance of the certificate and patent, is not a beneficiary under the Act, unless the right of occupancy was acquired through one who was a rightful occupant on the date of filing the application." Lockwitz v. Larson, (1898) 16 Utah 275.

The legal title vests in the occupant when the trustee in whom is vested, under the laws of Congress and by patent from the United States, the land comprising a town site, in trust for the occupants, executes a deed to a parcel of land to one claiming to be a beneficiary of the trust. Murray v. Hobson, (1887) 10 Colo. 66. See also Mills v. Hobson, (1887) 10 Colo. 78.

When trustee to execute deed.—The trustee should, under this statute, execute deeds to occupants of the town site and other lots when they have complied with the local rules and regulations. Aspen v. Rucker, (1887) 10 Colo. 184; Mankato v. Meagher, 17 Minn. 265.

The failure of the deed to recite the authority by which it is executed does not invalidate the deed. Burbank v. Ellis, (1878) 7 Neb. 156.

Execution of deeds only after filing of plat and survey.—An original claimant of a

town-site lot entered under this section is entitled to receive a deed therefor from the probate judge who holds the title as trustee, only after the town site has been surveyed into blocks, lots, and streets and alleys, and a plat of such survey filed in the office of the county recorder; and after such filing the streets and alleys designated in the plat become dedicated to the public use forever, and a claimant can acquire no title in fee to any street or alley upon which his lot abuts. Hershfield v. Rocky Mountain Bell Telephone Co., (1892) 12 Mont. 102.

When land taxable.—Until a conveyance has been made by the trustee to the occupant a town-site lot is not subject to taxation. Topeka Commercial Security Co. v. McPherson, (1898) 7 Okla. 332.

Rights of individuals in streets and alleys.—Where, at the time of the entry by the probate judge, certain lots in the town site were adjacent to a recognized street or alley, the occupants of the lots acquired an interest in such streets and alleys which was as much to be respected as their interest in the lots themselves. Parchen v. Ashby, (1883) 5 Mont. 68. See also Ashby v. Hall, (1886) 119 U. S. 528, *affirming* (1876) 2 Mont. 489; Dooly Block v. Salt Lake Rapid Transit Co., 9 Utah 31.

Streets and alleys to which public right attaches.—The streets and alleys contemplated by the Act, and as to which on the entry of lands the interest of the public attaches, are those streets and alleys which exist as a fact at the time of the entry, either by actual use or by the consent and acquiescence of the occupants affected, and not streets or lots laid out upon paper and to which the occupant has never given his consent. Bingham v. Walla Walla, (1887) 3 Wash. Ter. 68; Ashby v. Hall, (1886) 119 U. S. 526. See also Mills v. Hobson, (1887) 10 Colo. 78.

Title to half of street.—The grantee of a lot by deed from the trustee takes title, both to the lot and to the street on which it abuts, up to the centre of the street, subject to the easement of the public. Mankato v. Willard, 13 Minn. 13, 97 Am. Dec. 208; Harrington v. St. Paul, etc., R. Co., 17 Minn. 216; Mankato v. Meagher, 17 Minn. 265.

Estoppel of occupant by dedication.—As between individuals, who have purchased lots which the proprietor had platted into a town site, and the proprietor, the individuals are entitled to have such streets as are necessary or convenient for their use and enjoyment of the property purchased by them, kept open for their own use and that of the public. But such a proprietor is not estopped from reclaiming or shutting up any street or portion thereof delineated on his plat, where private rights are not directly affected; and as against the municipality claiming the streets, where the public have not acquired rights by user, or acceptance of the offer to dedicate, indicated by the platting, the owner is not estopped. He may revoke or recall his offer to dedicate before actual acceptance at any time, when the plat has not been executed in accordance with the statute, and

placed upon record. *Diamond Match Co. v. Ontonagon*, (1888) 72 Mich. 249.

Person without title estopped by dedication.—Since a person who has no title may become estopped by a common-law dedication, a claimant under the town-site law may become estopped by a dedication for a street or other purpose of a portion of lots occupied by him, although his right to a deed, at the time of the dedication, was not established. *Mankato v. Willard*, 13 Minn. 13, 97 Am. Dec. 208; *Mankato v. Meagher*, 17 Minn. 265; *Mankato v. Warren*, 20 Minn. 144.

No dedication shown.—Where, after the passage of this Act, town authorities adopted an official map of the town indicating a street laid out through the lands occupied by a private person at the date of the Act, the right of the occupant to the lands designated as a street was not affected thereby, and the petitioning of the municipal authorities by the grantees of such occupant for a deed of the land, and describing the land in the petition by reference to the map, did not operate to dedicate the land designated as a street to the use of the public. Nor will a conveyance of other portions of the lands of the occupant, described in the conveyance by reference to such street, dedicate the street to the public. *Cerf v. Pflieger*, (1892) 94 Cal. 131.

Loss of right by abandonment.—An occupant upon the public domain of the United States of a lot which is thereafter platted into blocks, streets, and alleys, and entered as provided by this Act, may lose whatever right he acquired by prior occupancy and possession, by abandonment, and such abandonment may be inferred from his acts and declarations, and from the declarations of such occupant's grantee. *Boise City v. Flanagan*, (1898) 6 Idaho 149; *Weisberger v. Tenny*, 8 Minn. 456; *Brown v. Parker*, (1894) 2 Okla. 264.

Abandonment a question of fact.—The question whether a lot has been abandoned is one of fact upon which the findings by the proper officers of the land department are final in the absence of fraud or mistake. *Cook v. McCord*, (1899) 9 Okla. 200.

Voluntary withdrawal from lot.—Where a party had been in the occupancy of a lot, and prior to the passage of this Act voluntarily withdrew therefrom and gave it up to another, the rights which depended on his keeping the possession were gone. *Stringfellow v. Cain*, (1878) 99 U. S. 610.

When land liable to loss by abandonment.—An occupant may lose the land by abandonment at any time until he has complied with the law in regard to improvements, occupancy, etc., and made application for a deed in accordance with the law and paid the price. *Young v. Tiner*, (1894) 4 Idaho 269; *Thompson v. Holbrook*, (1876) 1 Idaho 609.

Facts insufficient to show abandonment.—See *Webber v. Petty*, (1892) 2 Colo. App. 63.

LEGISLATIVE REGULATIONS.

Purpose of provision.—Congress intended by the last provision of the above section

that the legislature of the state might authorize the trustee to make a survey and plat of unoccupied lands and dedicate the streets and public grounds to the public use, or that it might authorize a sale of the lots in such parcels as should seem to be required by the situation and probable future of the town. *Diamond Match Co. v. Ontonagon*, (1888) 72 Mich. 249.

State acts regulating disposal of lots.—In pursuance of this section a number of states and territories have passed appropriate statutes regulating the sale of town-site lots and the disposal of the proceeds. *Hussey v. Smith*, (1878) 99 U. S. 20, reversing (1873) 1 Utah 129; *Hussey v. Merritt*, (1878) 99 U. S. 25, note (construing Utah statute); *Robertson v. Martin*, (Ariz. 1904) 76 Pac. Rep. 614; *Ricks v. Reed*, (1862) 19 Cal. 551; *Ryan v. Tomlinson*, (1866) 31 Cal. 11; *Cerf v. Pflieger*, (1892) 94 Cal. 131; *Amador County v. Gilbert*, (1901) 133 Cal. 51; *Coffield v. McClellan*, (1871) 1 Colo. 370, affirmed (1872) 16 Wall. (U. S.) 331; *Tucker v. McCoy*, (1885) 8 Colo. 368; *Aspen v. Rucker*, (1887) 10 Colo. 184; *Graves v. Steel*, (1854) 4 Greene (Iowa) 377; *Winfield Town Co. v. Maris*, (1873) 11 Kan. 128; *Independence Town Co. v. De Long*, (1873) 11 Kan. 152; *Allen v. Houston*, (1878) 21 Kan. 194; *Remillard v. Blackmarr*, (1892) 49 Minn. 490; *Schnepel v. Mellen*, (1878) 3 Mont. 118; *Helena v. Albertose*, (1889) 8 Mont. 499; *Ming v. Foote*, (1890) 9 Mont. 201; *State v. Webster*, (1903) 28 Mont. 104; *Tierney v. Cornell*, (1874) 3 Neb. 267; *Lechler v. Chapin*, (1877) 12 Nev. 65; *Goldberg v. Kidd*, (1894) 5 S. Dak. 169; *Linck v. Salt Lake City*, (1889) 6 Utah 109; *Drake v. Reggel*, (1894) 10 Utah 376; *Newhouse v. Simino*, (1892) 3 Wash. 648; *Kellogg v. Sessions*, (1892) 4 Wash. 814.

Extent of legislative control.—The power vested in legislatures in the execution of the trust is confined to regulations for the disposal of the land and the proceeds of the sales. These regulations may extend to provisions for the ascertainment of the nature and extent of the occupancy of different claimants of lots, and the execution and delivery to those found to be occupants in good faith of some official recognition or title in the nature of a conveyance. But the legislatures cannot dispose of the trust in any manner other than that prescribed by Congress or authorize any diminution of the rights of the occupants when the extent of their occupancy is once established. *Ashby v. Hall*, (1886) 119 U. S. 526; *Clark v. Titus*, (1886) 2 Ariz. 147; *Denver v. Kent*, (1871) 1 Colo. 336; *Pueblo v. Budd*, (1894) 19 Colo. 587; *Lechler v. Chapin*, (1877) 12 Nev. 71. See also *Robertson v. Martin*, (Ariz. 1904) 76 Pac. Rep. 614; *Aspen v. Rucker*, (1887) 10 Colo. 184; *Winfield Town Co. v. Maris*, (1873) 11 Kan. 128; *Newhouse v. Simino*, (1892) 3 Wash. 648; *Kellogg v. Sessions*, (1892) 4 Wash. 814.

Limiting time for application for title.—In *Goldberg v. Kidd*, (1894) 5 S. Dak. 169, it was held that it is not competent for the legislature to say that the equitable owner

continuing in open and uninterrupted possession shall forfeit his rights under the Act of Congress unless, within a limited number of days, he shall apply for and put himself in a position to receive a full legal title; but the court expressed the opinion that the legislature did have authority to prescribe regulations for the orderly establishment by the county judge of such facts as would enable him to intelligently close out his trust by making deeds to persons entitled to them, and to provide that no occupant should obtain a deed without complying with such regulations, and to fix the time within which, under such regulations, application for deeds should be made.

Payment of purchase price by occupant.—Under a statute of a territory requiring the "claimant" of a lot to pay to the trustee

a certain sum before he is entitled to a deed, all occupants must become "claimants," and as such file a statement and pay to the trustee the purchase price as required by the statute. This regulation, in connection with the vesting of the legal title in the occupant, is reasonable, and consistent with the other regulations of Congress relating to the disposal of town-site lots. *Robertson v. Martin*, (Ariz. 1904) 76 Pac. Rep. 614.

Compliance with legislative regulations.—Where the statutory regulations authorized by this section specify what lands shall be subject to sale by the trustee, and prescribe the time and conditions of the sale, such regulations must be complied with or the sale and the deed made in pursuance thereof will be totally void. *Amador County v. Gilbert*, (1901) 133 Cal. 51.

Sec. 2388. [*Entry under preceding section, when to be made.*] The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a town-site shall be filed with the register of the proper land-office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States; but in any Territory in which a land-office may not have been established, such declaratory statements may be filed with the surveyor-general of the surveying-district in which the lands are situated; who shall transmit the same to the General Land-Office. [*R. S.*]

Act of March 2, 1867, ch. 177, 14 Stat. L. 541.

Decisions judicial in character and not subject to collateral attack.—Decisions under this and sections 2389, 2390 *infra*, both of

law and fact, made by the proper officer or officers, are judicial in character and not subject to collateral attack. *King v. McAndrews*, (C. C. A. 1901) 111 Fed. Rep. 860.

Sec. 2389. [*Entry in proportion to number of inhabitants.*] If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands authorized by law; and where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed. [*R. S.*]

Act of March 2, 1867, ch. 177, 14 Stat. L. 541.

See note under section, 2388, *supra*.

Sec. 2390. [*Authorities of Salt Lake City, rights of, as to entry.*] The words "not exceeding five thousand in all," in the preceding section, shall not apply to Salt Lake City, in the Territory of Utah; but such section shall be so construed in its application to that city that lands may be entered for the full number of inhabitants contained therein, not exceeding fifteen thousand; and as that city covers school-section number thirty-six, in township number one north, of range number one west, the same may be embraced in such entry, and indemnity shall be given therefor when a grant is made by Congress of

sections sixteen and thirty-six, in the Territory of Utah, for school purposes. [R. S.]

Act of July 1, 1870, ch. 193, 16 Stat. L. 183.
Construction of section a "federal question."—Where a trustee had issued two deeds to the same premises to different claimants, the determination of which of the deeds,

if either, is valid under this section presents a federal question for which the cause is removable. *Dunton v. Muth*, (1891) 45 Fed. Rep. 390.

See note under section 2388, *supra*.

Sec. 2391. [*Certain acts of trustees to be void.*] Any act of the trustees not made in conformity to the regulations alluded to in section twenty-three hundred and eighty-seven shall be void. [R. S.]

Act of March 2, 1867, ch. 177, 14 Stat. L. 541.

Sale of unsurveyed lands.—Where the laws of the state in force with respect to the procedure to be observed in dealing with lands within town-site entries required the lands to be "surveyed into suitable blocks and lots," the trustee, upon ascertaining that this had not been done, could not proceed to sell such lands. *State v. Webster*, (1903) 28 Mont. 104.

Sale without advertisement.—The selling of a lot, without conforming to the rule that it must be first advertised and offered for sale at public vendue, as prescribed by the statute passed by the legislature of the territory, renders a deed by the trustee totally void. *Edwards v. Tracy*, (1874) 2 Mont. 49.

Survey violating existing rights in streets and alleys.—The statute of the territory having provided that the survey and plat of the town site should conform as well as might be to the existing rights, interests, and

claims of the occupants thereof, where, prior to the survey of the probate judge, there had been an earlier survey and plat designating lots, streets, and alleys, and the occupants had by usage and common consent accepted such survey and plat and had bought and sold their lots accordingly, then such streets and alleys remained streets and alleys after the survey and entry of the probate judge, though not so designated on his plat and survey, and in so far as his survey failed to conform to the rights of the occupants already acquired, it is void. *Parchen v. Ashby*, (1883) 5 Mont. 68.

Utah statute.—An Act of the territory of Utah directed that deeds of conveyance should be "executed by the mayor of the city or town, under seal of the corporation." It was held that a deed bearing the corporate seal, but not witnessed, was sufficient notwithstanding a general statute in the territory requiring deeds to be witnessed. *Townsend v. Little*, (1883) 109 U. S. 504.

Sec. 2392. [*No title acquired to gold mines, etc., or to mining claims, etc.*] No title shall be acquired, under the foregoing provisions of this chapter, to any mine of gold, silver, cinnabar, or copper; or to any valid mining-claim or possession held under existing laws. [R. S.]

Act of March 2, 1867, ch. 177, 14 Stat. L. 541; Act of June 8, 1868, ch. 53, 15 Stat. L. 67.

See the following text.

This section is a re-enactment of the Act of March 2, 1867, and the Act of June 8, 1868, ch. 53, the first of which acts was not repealed by the latter. *Dower v. Richards*, (1894) 151 U. S. 658.

States excepted.—This section applies to all the states except Michigan, Wisconsin, Minnesota, Missouri, and Kansas. *Deffebach v. Hawke*, (1885) 115 U. S. 392.

Two classes of mining claims distinguished.—This section prevents a town-site entry from carrying title to two classes of mining claims. The first class need not be characterized by possession in any person. It is sufficient if in fact the property is a known mine of one of the metals mentioned in the statute, and it is not sufficient that there be in fact a mine of this description unless at the time of the town-site entry it is known to be such. The other class of mining claims referred to consists of any valid mining claim or possession held under existing laws, and in this class of cases it is immaterial whether the claim was known to contain minerals of

sufficient value to justify exploration or not. *Callahan v. James*, (1903) 141 Cal. 291.

Mining locations not acquirable under Act.—This Act recognizes the possession of mining locations within town limits and forbids the acquisition of such locations under proceedings to which title to other lands there situated is secured, thus leaving the mineral deposits within town sites open to exploration, and the land in which they are found to occupation and purchase, in the same manner as such deposits are elsewhere explored and possessed and the lands containing them are acquired. *Steel v. St. Louis Smelting, etc., Co.*, (1882) 106 U. S. 447; *Dower v. Richards*, (1894) 151 U. S. 661, *affirming* (1889) 81 Cal. 44; *Deffebach v. Hawke*, (1885) 115 U. S. 392; *Sparks v. Pierce*, (1885) 115 U. S. 408; *Davis v. Weibbold*, (1891) 139 U. S. 507; *Reilly v. Berry*, (1887) 2 Ariz. 272; *Blackmore v. Reilly*, (1888) 2 Ariz. 442; *Richards v. Dower*, (1883) 64 Cal. 62, (1889) 81 Cal. 44; *Jones v. Petaluma*, (1868) 36 Cal. 230; *Hunt v. Steese*, (1888) 75 Cal. 620; *Poire v. Wells*, (1882) 6 Colo. 406; *Butte City Smoke-house Lode Cases*, (1887) 6 Mont. 397; *King v. Thomas*, (1887) 6 Mont. 409; *Talbot v.*

King, (1886) 6 Mont. 76; Silver Bow Min., etc., Co. v. Clark, (1885) 5 Mont. 378. See also O'Keefe v. Cannon, (1892) 52 Fed. Rep. 898.

Known mines are likewise excepted from the operation of the town-site grant. McLaughlin v. U. S., (1882) 107 U. S. 526; Colorado Coal, etc., Co. v. U. S., (1887) 123 U. S. 307; Davis v. Weibbold, (1891) 139 U. S. 507; Larned v. Jenkins, (C. C. A. 1902) 113 Fed. Rep. 634; Silver Bow Min., etc., Co. v. Clark, (1885) 5 Mont. 378. See also U. S. v. Reed, (1886) 12 Sawy. (U. S.) 99; Richards v. Dower, (1889) 81 Cal. 44; Gold Hill Quartz Min. Co. v. Ish, (1873) 5 Oregon 104.

Knowledge of mineral deposit at time of patent.—Lands to which the first clause of this section is applicable must be such lands as are known at the time the patent is issued to be valuable for their mineral deposits, in order to avoid any possible doubt as to the validity of the title which may be issued for lands in which mineral deposits may be afterwards discovered. Deffeback v. Hawke, (1885) 115 U. S. 392; Davis v. Weibbold, (1891) 139 U. S. 507 (each *explained and distinguished* in Barden v. Northern Pac. R. Co., (1894) 154 U. S. 288); Larned v. Jenkins, (C. C. A. 1902) 113 Fed. Rep. 634; Kansas City Min., etc., Co. v. Clay, (1892) 3 Ariz. 326; Richards v. Dower, (1889) 81 Cal. 44; Smith v. Hill, (1891) 89 Cal. 122. See also Moran v. Horsky, (1900) 178 U. S. 205.

A ledge which had been profitably worked, and contained gold bearing rock, but which had been abandoned, and which, at the time of the issuing of a town-site patent of the land within which it lies, was not known to be valuable for mining purposes, is not excepted from the operation of the town-site patent, although after such patent had taken effect the land is found to be still valuable for mining purposes. Dower v. Richards, (1894) 151 U. S. 658.

Tunneling under lot to reach minerals.—A grant by a town-site patent issued by the United States prior to the passage of the Act of 1872, prescribing the maximum width for quartz-mining claims, carries an absolute

fee-simple title to the grantee and those claiming under him in a lot in which a quartz ledge was known to exist at the date of the patent and not actually included in the ledge; and a third person has no right, without the consent of the owner, to run a tunnel under a portion of the land not included in the ledge for the purpose of working such ledge. Dower v. Richards, (1887) 73 Cal. 477.

Attacking town-site patents collaterally for embracing mineral lands.—A town-site patent regularly issued cannot be attacked collaterally by parties who go upon the patented town site and locate a mining claim, upon the theory that the ground so located was known to be mineral land at the time of the town-site entry, and being such, was excepted from and did not pass by virtue of the town-site patent; for the question whether any lands located and held under the provisions of the land laws are mineral lands is to be determined by the officers of the land department, and their findings upon that question are conclusive and can only be attacked by a direct proceeding under the direction of the government of the United States. Steel v. St. Louis Smelting, etc., Co., (1882) 106 U. S. 447; Davis v. Weibbold, (1891) 139 U. S. 507; Barden v. Northern Pac. R. Co., (1894) 154 U. S. 288; Carter v. Thompson, (1894) 65 Fed. Rep. 329; New Dunderberg Min. Co. v. Old, (C. C. A. 1897) 79 Fed. Rep. 598; Horsky v. Moran, (1898) 21 Mont. 345; Board of Education v. Mansfield, (S. Dak. 1903) 95 N. W. Rep. 286. See also Pacific Coast Min., etc., Co. v. Spargo, (1883) 16 Fed. Rep. 348; Buena Vista Petroleum Co. v. Tulare Oil, etc., R. Co., (1895) 67 Fed. Rep. 226.

Excepting town-site rights in patents for mining claims.—No legal objection exists to the practice of the land department, in issuing patents for mining claims upon veins or lodes, of inserting in the patent a clause excepting from the grant the town-site rights in the premises, where it appears that the surface ground of any such claims lies wholly or partly within the limits of a previously located, entered, or patented town site. (1881) 17 Op. Atty-Gen. 248.

SEC. 16. [Town-site entries not to include mining rights—mining claims preserved.] That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or

occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant. [26 Stat. L. 1101.]

This is from the Act of March 3, 1891, ch. 561, "An act to repeal timber-culture laws and for other purposes."

Sec. 2393. [*Military or other reservations, etc.*] The provisions of this chapter shall not apply to military or other reservations heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the Land-Office by title derived from the Crown of Spain, or otherwise. [R. S.]

Act of March 2, 1867, ch. 177, 14 Stat. L. 541.

Sec. 2394. [*Inhabitants of towns on public lands, right of, to enter.*] The inhabitants of any town located on the public lands may avail themselves, if the town authorities choose to do so, of the provisions of sections twenty-three hundred and eighty-seven, twenty-three hundred and eighty-eight, and twenty-three hundred and eighty-nine; and in addition to the minimum price of the lands embracing any town-site so entered, there shall be paid by the parties availing themselves of such provisions all costs of surveying and platting any such town-site, and expenses incident thereto incurred by the United States, before any patent issues therefor; but nothing contained in the sections herein cited shall prevent the issuance of patents to persons who have made or may hereafter make entries, and elect to proceed under other laws relative to town-sites in this chapter set forth. [R. S.]

Act of June 8, 1868, ch. 53, 15 Stat. L. 67. King v. McAndrews, (C. C. A. 1901) 111
Lands reserved to Indians are not "public Fed. Rep. 860.
lands" within the meaning of this section.

An act respecting the limits of reservations for town-sites upon the public domain.

[Act of March 3, 1877, ch. 113, 19 Stat. L. 392.]

[SEC. 1.] [*Quantity of land excluded from homestead entry for town-site.*] That the existence or incorporation of any town upon the public lands of the United States shall not be held to exclude from pre-emption or homestead entry a greater quantity than twenty-five hundred and sixty acres of land, or the maximum area which may be entered as a town-site under existing laws, unless the entire tract claimed or incorporated as such town-site shall, including and in excess of the area above specified, be actually settled upon, inhabited, improved, and used for business and municipal purposes. [19 Stat. L. 392.]

Pre-emption laws were repealed by Act of March 3, 1891, ch. 561, sec. 4, *supra*, p. 285.

Purpose of Act.—"The Act was intended to apply to and remedy a state of facts that existed in many western towns, where the corporate limits included large tracts of public land, unoccupied and unimproved, and not used for business or municipal purposes. It was evidently the purpose of the Act to establish a limitation upon such reservations for town sites on the public domain, and to open to settlement under the public land laws the

unoccupied lands that were not used or required for municipal purposes." Vilas v. Algar, (C. C. A. 1901) 109 Fed. Rep. 519.

Cities laid out mainly on private lands.—This Act has no application to incorporated cities laid out on land mainly of private ownership and including some of the lands of the United States, but only to cities laid out exclusively on the public lands of the United States according to the laws of the United States. Houlton v. Chicago, etc., R. Co., (1893) 86 Wis. 59.

SEC. 2. [*Confirms entries previously made.*]

This section reads as follows:

"Sec. 2. That where entries have been heretofore allowed upon lands afterward ascer-

tained to have been embraced in the corporate limits of any town, but which entries are or shall be shown, to the satisfaction of

the Commissioner of the General Land-Office, to include only vacant unoccupied lands of the United States, not settled upon or used for municipal purposes, nor devoted to any public use of such town, said entries, if regular in all respects, are hereby confirmed and may be carried into patent: *Provided*, That this confirmation shall not operate to restrict the entry of any town-site to a smaller area

than the maximum quantity of land which, by reason of present population, it may be entitled to enter under section twenty-three hundred and eighty-nine of the Revised Statutes." [19 Stat. L. 392.]

This section has been construed in the following cases: *Vilas v. Algar*, (C. C. A. 1901) 109 Fed. Rep. 519; *Alger v. Hill*, (1893) 2 Wash. 345, (1891) 6 Wash. 358.

SEC. 3. [*Where town site exceeds maximum — proceedings — disposal of excess — incorporating acts to be furnished surveyor-general.*] That whenever the corporate limits of any town upon the public domain are shown or alleged to include lands in excess of the maximum area specified in section one of this act, the Commissioner of the General Land Office may require the authorities of such town, and it shall be lawful for them, to elect what portion of said lands, in compact form and embracing the actual site of the municipal occupation and improvement, shall be withheld from pre-emption and homestead entry; and thereafter the residue of such lands shall be open to disposal under the homestead and pre-emption laws. And upon default of said town authorities to make such selection within sixty days after notification by the Commissioner, he may direct testimony respecting the actual location and extent of said improvements, to be taken by the register and receiver of the district in which such town may be situated; and, upon receipt of the same, he may determine and set off the proper site according to section one of this act, and declare the remaining lands open to settlement and entry under the homestead and pre-emption laws; and it shall be the duty of the secretary of each of the Territories of the United States to furnish the surveyor-general of the Territory for the use of the United States a copy duly certified of every act of the legislature of the Territory incorporating any city or town, the same to be forwarded by such secretary to the surveyor-general within one month from date of its approval. [19 Stat. L. 392.]

See note under section 1, *supra*.

SEC. 4. [*Towns with less than maximum may make additional entries.*] It shall be lawful for any town which has made, or may hereafter make entry of less than the maximum quantity of land named in section twenty-three hundred and eighty-nine of the Revised Statutes to make such additional entry, or entries, of contiguous tracts, which may be occupied for town purposes as when added to the entry or entries therefore made will not exceed twenty-five hundred and sixty acres: *Provided*, That such additional entry shall not together with all prior entries be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in said section twenty-three hundred and eighty-nine. [19 Stat. L. 392.]

An act to authorize entry of the public lands by incorporated cities and towns for cemetery and park purpose[s].

[Act of Sept. 30, 1890, ch. 1121, 26 Stat. L. 502.]

[*Purchase of lands by cities and towns for cemeteries and parks.*] That incorporated cities and towns shall have the right, under rules and regulations prescribed by the Secretary of the Interior, to purchase for cemetery and park purposes not exceeding one-quarter section of public lands not reserved for public use, such lands to be within three miles of such cities or towns: *Provided*, That when such city or town is situated within a mining district, the

land proposed to be taken under this act shall be considered as mineral lands, and patent to such land shall not authorize such city or town to extract mineral therefrom, but all such mineral shall be reserved to the United States, and such reservation shall be entered into such patent. [26 Stat. L. 502.]

SEC. 22. [*Oklahoma town sites — reservations for parks, schools, etc. — homestead entries — rights of occupants — disposition of proceeds.*] That the provisions of title thirty-two, chapter eight of the Revised Statutes of the United States relating to "reservation and sale of town sites on the public lands" shall apply to the lands open, or to be opened to settlement in the Territory of Oklahoma, except those opened to settlement by the proclamation of the President on the twenty-second day of April; eighteen hundred and eighty-nine: *Provided*, That hereafter all surveys for town sites in said Territory shall contain reservations for parks (of substantially equal area if more than one park) and for schools and other public purposes, embracing in the aggregate not less than ten nor more than twenty acres; and patents for such reservations, to be maintained for such purposes, shall be issued to the towns respectively when organized as municipalities: *Provided further*, That in case any lands in said Territory of Oklahoma, which may be occupied and filed upon as a homestead, under the provisions of law applicable to said Territory, by a person who is entitled to perfect his title thereto under such laws, are required for town site purposes, it shall be lawful for such person to apply to the Secretary of the Interior to purchase the lands embraced in said homestead or any part thereof for town-site purposes. He shall file with the application a plat of such proposed town-site, and if such plat shall be approved by the Secretary of the Interior, he shall issue a patent to such person for land embraced in said town site, upon the payment of the sum of ten dollars per acre for all the lands embraced in such town site, except the lands to be donated and maintained for public purposes as provided in this section. And the sums so received by the Secretary of the Interior shall be paid over to the proper authorities of the municipalities when organized, to be used by them for school purposes only. [26 Stat. L. 91.]

This is from the Act of May 2, 1890, ch. 182, "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States Court in

the Indian Territory, and for other purposes." See the following text.

Greer county town sites. See *infra*, div. XIII.

An act to provide for town site entries of lands in what is known as "Oklahoma," and for other purposes.

[Act of May 14, 1890, ch. 207, 26 Stat. L. 109.]

[SEC. 1.] [*Town-site entries of lands in Oklahoma by trustees — surveys, conveyances, etc.*] That so much of the public lands situate in the Territory of Oklahoma, now open to settlement, as may be necessary to embrace all the legal subdivisions covered by actual occupancy for purposes of trade and business, not exceeding twelve hundred and eighty acres in each case, may be entered as town-sites, for the several use and benefit of the occupants thereof, by three trustees to be appointed by the Secretary of the Interior for that purpose, such entry to be made under the provisions of section twenty-three hundred and eighty-seven of the Revised Statutes as near as may be; and when such entry shall have been made, the Secretary of the Interior shall provide

regulations for the proper execution of the trust, by such trustees including the survey of the land into streets, alleys, squares, blocks, and lots when necessary, or the approval of such survey as may already have been made by the inhabitants thereof, the assessment upon the lots of such sum as may be necessary to pay for the lands embraced in such town-site, costs of survey, conveyance of lots, and other necessary expenses, including compensation of trustees: *Provided*, That the Secretary of the Interior may when practicable cause more than one town site to be entered and the trust thereby created executed in the manner herein provided by a single board of trustees, but not more than seven boards of trustees in all shall be appointed for said Territory, and no more than two members of any of said boards shall be appointed from one political party. [26 Stat. L. 109.]

Boards of trustees abolished by Act of July 7, 1898, ch. 571, *infra*, p. 361.

Provisions of Act extended to Cherokee Outlet by Res. of Sept. 1, 1893, No. 4, *infra*, p. 360.

Differing from general Town-site Act.—The town sites referred to by the general Town-site Act (R. S. sec. 2387) were to be entered by the corporate authorities of the town if incorporated, or if not by the judge of the County Court for the county in which the town was located, and the trust as to the disposal of the lands, and the proceeds of the sales thereof, were to be executed in accordance with such regulations as might be prescribed by the legislative authorities of the state or territory in which the town might be situated; while under this special Act, in reference to Oklahoma, the entry is to be made by trustees appointed by the secretary, and the trust conducted under such regulations as may be established by him. In the one case the government parted with its connection with the land when the patent issued to the local trustees; in the other, the government retained its connection by having the entry made by its own agents and the trust executed in the manner it directs. By the scheme of this Act the title is held in trust for the occupying claimants, it is true, but also in trust *sub modo* for the government until the rightful claimants and the undisposed of or surplus land are ascertained. *McDaid v. Oklahoma*, (1893) 150 U. S. 209; *Bockfinger v. Foster*, (1903) 190 U. S. 116.

Nature of trustee's title.—The township trustees do not hold an indefeasible title as of private right with power to dispose of the land at will, but only as trustees for such occupants as may be ascertained, in the mode prescribed by the Act of Congress, to be entitled to the particular lots within the town-site boundary. The creation of the trust by Congress was only a step towards the ultimate transmission of the title of the United States to occupants under the Township Act. *Bockfinger v. Foster*, (1903) 190 U. S. 116.

Suit against town-site trustees not maintainable.—A suit against town-site trustees to compel them, without regard to the Acts of Congress, to convey to one who was not an occupant within the meaning of that Act, but who claimed that he had acquired, under the homestead laws, a right to the land su-

perior to that held by the town-site trustees, for the use of occupants, is not maintainable, for the reason that the trustees are simply government agents created for the conveyance of the legal title from the government to the occupants, and that the legal title is still in the United States and subject exclusively to the supervision of the department of the interior. But when an occupant, under the Town-site Law, has acquired title from the town-site trustees, any one who adversely claims title to the land can litigate the matter with the occupant in some court of competent jurisdiction, because, as between the United States and the occupant, the former has then parted with its title. *Bockfinger v. Foster*, (1903) 190 U. S. 116, *affirming* (1900) 10 Okla. 488; *Hammer v. Hermann*, (1901) 11 Okla. 127; *Fitzgerald v. Foster*, (1902) 11 Okla. 558. See also *McDaid v. Oklahoma*, (1893) 150 U. S. 209; *Johnson v. Towsley*, (1871) 13 Wall. (U. S.) 72; *Paine v. Foster*, (1900) 9 Okla. 213.

Parties.—Even if an action against the town-site trustees to declare a resulting trust in favor of a plaintiff who claims adversely to the town-site entry could be maintained, the town-site lot claimants are necessary parties to the action. *Fitzgerald v. Foster*, (1902) 11 Okla. 558; *Bockfinger v. Foster*, (1900) 10 Okla. 488; *Paine v. Foster*, (1900) 9 Okla. 216.

When right of occupant becomes vested.—Congress has exclusive power over the disposition of the public domain, and may divest by appropriate legislation any interest acquired by settlement or occupancy at any time prior to an entry of the land, at the proper land office. No vested right as against the United States is acquired until all the prerequisites for the acquisition of the title have been complied with. *Guthrie v. Beamer*, (1895) 3 Okla. 652; *Ard v. Brandon*, (1895) 156 U. S. 537.

Supervisory power of secretary of interior.—The secretary of the interior is given supervision of the entire business of the land department, and he is invested with authority to review, reverse, amend, or affirm all proceedings in the department having for their ultimate object to secure the alienation of any portion of the public lands. This power of supervision may be exercised by the secretary, by direct orders, or by review on appeal, or on his own motion. It is his duty to

exercise it whenever matters are brought to his attention which demand the exercise of such supervision. The supervisory power of the secretary over town-site trustees arises from the subordinate regulations of such trustee to himself and not from his general duties in relation to the public lands, and where the United States grants lands, absolutely and without reservation, to the trustees and their successors, to hold in trust for the use and benefit of the occupant, the trustees have the legal title and the government has no further control over the title other than the supervisory authority of the secretary of the interior in the adjustment of controversies between conflicting claimants to the lands. *Paine v. Foster*, (1900) 9 Okla. 213.

Deposit for expenses of contest.—A rule of the secretary of the interior which requires a contestant before town-site trustees, appointed under this Act, to deposit a certain sum with the treasurer of the board before the cause will be heard, is authorized by law and is a reasonable rule, and the contestant or claimant failing to comply with the rule cannot invoke the aid of a court of equity, although his failure to comply with the rule may have been due to his poverty. *Twine v. Carey*, (1894) 2 Okla. 249; *Baldwin v. Mason* (1895) 3 Okla. 237; *Shultz v. Jones*, (1895) 3 Okla. 504; *Matthews v. Young*, (1895) 3 Okla. 649.

Effect of approval of former survey.—Under the foregoing provision of this section for the entry and platting of the town sites, authorizing the approval of surveys already made and adopted by the inhabitants of the town, where prior to the passage of this Act the inhabitants of the town had made a

survey and adopted a plat, and subsequently the secretary of the interior adopted and approved such survey and plat, the Act of Congress, and the action of the secretary thereunder, were, in effect, a dedication to the public uses of all such portions of the town site as were designated on such plat as streets and alleys, and had the effect to divest any individual claim, by settlement or occupancy, to such portions. A different rule would apply if the dedication had been attempted by the trustees or by Congress after the land was entered for the benefit of the occupants. The dedication of the lands for streets by the Act of Congress, and the action of the secretary, relate to the time of the adoption of the statute, or, probably, to the date of the adoption of the plat by the inhabitants. *Guthrie v. Beamer*, (1895) 3 Okla. 652.

Liability of disbursing agent for money deposited in banks.—A special disbursing agent of the board of town-site trustees, appointed in pursuance of regulations made by the secretary of the interior, authorized by this section, which regulations provided that the agent should deposit "all the sums received by him at least once a week, and when practicable daily, in some bank designated by the board," is liable for any loss that may arise from the failure of these banks, and he is not relieved from liability by the fact that these banks were designated by the board of trustees as places of deposit. The fact that some of the money deposited was derived from assessments and was never in the treasury is immaterial, inasmuch as it was public money, for which he was bound to account according to the terms of his bond. (1891) 20 Op. Atty-Gen. 24.

SEC. 2. [Certificate issued by recognized authority as evidence of occupancy.] That in the execution of such trust, and for the purpose of the conveyance of title by said trustees, any certificate or other paper evidence of claim duly issued by the authority recognized for such purpose by the people residing upon any town site the subject of entry hereunder, shall be, taken as evidence of the occupancy by the holder thereof of the lot or lots therein described, except that where there is an adverse claim to said property such certificate shall only be prima facie evidence of the claim of occupancy of the holder: *Provided*, That nothing in this act contained shall be so construed as to make valid any claim now invalid of those who entered upon and occupied said lands in violation of the laws of the United States or the proclamation of the President thereunder: *Provided further*, That the certificates hereinbefore mentioned shall not be taken as evidence in favor of any person claiming lots who entered upon said lots in violation of law or the proclamation of the President thereunder. [26 Stat. L. 109.]

SEC. 3. [Church lots.] That lots of land occupied by any religious organization, incorporated or otherwise, conforming to the approved survey within the limits of such town-site, shall be conveyed to or in trust for the same. [26 Stat. L. 109.]

SEC. 4. [Remaining lots to be sold, or reserved for public use.] That all lots not disposed of as hereinbefore provided for shall be sold under the direc-

tion of the Secretary of the Interior for the benefit of the municipal government of any such town, or the same or any part thereof may be reserved for public use as sites for public buildings, or for the purpose of parks, if in the judgment of the Secretary such reservation would be for the public interest, and the Secretary shall execute proper conveyances to carry out the provisions of this section. [26 Stat. L. 109.]

Deed issued to city pending other applications, void. — Town-site trustees appointed under this Act have no power to execute a deed to undisposed of lots in a town site to a city for public use as a site for public buildings, while applications of persons for deeds by virtue of occupancy were pending; and where it appeared that a deed was made while an appeal was pending from a decision of the town-site trustees adverse to the applicants, and before the final decision in the case was made by the secretary of the interior, and prior to an order of the secretary of the

interior, or any action tantamount thereto, setting aside the lots for public use as a site for public buildings, a deed to the lots made by the trustees to the city for such purpose is void. The city acquires no right to the use and occupancy of the lots for public purposes until the secretary of the interior has directed that the lots be reserved for such purpose for the city, or has executed a proper conveyance, or directed it to be executed to the town-site trustees to the city for such purposes. *Oklahoma City v. Hill*, (1897) 6 Okla. 114.

SEC. 5. [Kansas town-site law to govern trustees.] That the provisions of sections four, five, six and seven, of an act of the legislature of the State of Kansas, entitled "An act relating to town-sites," approved March second, eighteen hundred and sixty-eight, shall, so far as applicable, govern the trustees in the performance of their duties hereunder. [26 Stat. L. 109.]

Constructions of Kansas town-site laws followed in Oklahoma. — The town-site laws of Kansas having received judicial construction by the Supreme Court of the state prior

to their adoption by Congress for Oklahoma the courts of Oklahoma will follow the construction. *Chisolm v. Weisse*, (1895) 2 Okla. 611; *Brown v. Parker*, (1894) 2 Okla. 258.

SEC. 6. [Pending entries to have preference — appeals.] That all entries of town-sites now pending on application hereafter made under this act, shall have preference at the local land office of the ordinary business of the office, and shall be determined as speedily as possible, and if an appeal shall be taken from the decision of the local office in any such case to the Commissioner of the General Land Office, the same shall be made special, and disposed of by him as expeditiously as the duties of his office will permit, and so if an appeal should be taken to the Secretary of the Interior. And all applications heretofore filed in the proper land office shall have the same force and effect as if made under the provisions of this act, and upon the application of the trustees herein provided for, such entries shall be prosecuted to final issue in the name of such trustees, without other formality and when final entry is made the title of the United States to the land covered by such entry shall be conveyed to said trustees for the uses and purposes herein provided. [26 Stat. L. 110.]

Authority of secretary of interior to provide for appeal. — This Act did not contemplate that the final determination of conflicting claims to lots should devolve upon the trustees, and it was competent for the secretary of the interior to provide for an appeal to the commissioner of the general land office in cases of contested claims. When such appeal had been taken it became the duty of the trustees to decline to issue a deed to the appellee until the appeal had been disposed of. *McDaid v. Oklahoma*, (1893) 150 U. S. 209; *Bockfinger v. Foster*, (1903) 190 U. S. 116, *affirming* (1900) 10 Okla. 488; *Herbien v. Warren*, (1894) 2 Okla. 4;

Oklahoma City v. Hill, (1897) 6 Okla. 114; *Hammer v. Hermann*, (1901) 11 Okla. 19; See also *Paine v. Foster*, (1900) 9 Okla. 2.

After title has passed from the government by the issuance and delivery of a patent to the trustees, the executive control over the patent ceases except such as is given by the act, and no appeal will lie to the general land office or to the secretary of the interior from a decision of the trustees between two or more claimants; and although the secretary of the interior has authority under his general powers to prescribe rules to govern the trustees in making entry and purchase of the lands for town-site purposes prior to the

issuance of the patent, when the patent is issued his general authority ceases and he cannot provide by rule for appeals from the decisions of the trustees. *McDaid v. Territory*, (1892) 1 Okla. 92; *Moore v. Robbins*, (1877) 96 U. S. 530.

Review by the courts upon questions of law.—The courts have always, in proper cases, interceded to correct mistakes of law, and, without attempting to take from the land department the right to determine controverted questions of fact, have, when two or more claimants to public lands have based their claims upon uncontroverted facts, after title has passed to one of the parties, examined into such facts for the purpose of correcting errors of law committed by the officers of the department, if any were found to exist; but it has not been the policy of the courts generally to interfere with the findings of such officers made upon disputed questions of fact, either at law or in equity. *Twine v. Carey*, (1894) 2 Okla. 249; *King v. Thompson*, (1895) 3 Okla. 644; *Paine v. Foster*, (1900) 9 Okla. 213. See also *Johnson v. Towsley*, (1871) 13 Wall. (U. S.) 84; *Moore v. Robbins*, (1877) 96 U. S. 530; *Marquez v. Frisbie*, (1879) 101 U. S. 473; *Vance v. Lurbank*, (1879) 101 U. S. 514; *Quinby v. Conlan*, (1881) 104 U. S. 420.

Sufficiency of petition.—In order to authorize a court of equity to interfere with the final action of a board of town-site trustees appointed under this Act, on account of a misapplication of the law by such trustees, the petition must specifically set out the findings of fact made by such trustees, in order that the court may determine whether or not the law was properly applied to the facts found by the trustees. *Myers v. Berry*, (1895) 3 Okla. 612; *King v. Thompson*, (1895) 3 Okla. 644.

Findings of fact reviewed only for fraud.—The findings of fact made in a lot controversy by a board of town-site trustees appointed under this Act are final and conclusive, except on appeal to the proper departmental officers. The courts will not inquire into the facts or evidence upon which findings are based, unless it is clearly made to appear that such findings were procured by fraud, imposition, or misrepresentation,

to the manifest injury of the party complaining. *Myers v. Berry*, (1895) 3 Okla. 612; *Twine v. Carey*, (1894) 2 Okla. 249; *King v. Thompson*, (1895) 3 Okla. 644.

Sufficiency of allegations of fraud.—In order to give the courts jurisdiction to go behind the findings of fact made in a lot contest instituted before a board of town-site trustees appointed under this Act, and try and determine the cause, and render a decree adverse to the award made in such contest, on the ground of fraud, it is necessary that the complaint should allege the facts constituting the fraud with such fulness and particularity as to show to the court that the action of the officers whose duty it was to determine the controversy must necessarily have been affected thereby to the defeat of the complainant in the contest; and mere general allegations that the defendant, through false and fraudulent representations and false testimony, procured the deed to the lot, are not sufficient. The allegations of fact must show that the fraud which caused the defeat of the complainant was extrinsic or collateral to the matter tried, and not a fraud which was in issue in the contest. *Cummings v. McDermid*, (1896) 4 Okla. 272; *King v. Thompson*, (1895) 3 Okla. 644.

Review by courts only after title has passed to claimant.—A court of equity has no power to hear and determine any question affecting the title to public lands until the matter has been finally determined by the land department, and the title has passed from the government; but, after the title has passed to private parties, a court of equity will convert the holder of the legal title into a trustee to the true owner, if in equity and good conscience, and by the laws of Congress and rules of the department thereunder, it ought to have gone to another. *Twine v. Carey*, (1894) 2 Okla. 249; *King v. Thompson*, (1895) 3 Okla. 644.

Estoppel of occupant by failure to assert right.—Where a settler upon a lot claiming under this Act fails to assert any right to the lot before the board of town-site trustees, and such failure was wholly due to his own laches, he becomes thereby estopped from obtaining relief in a court of equity. *Bassett v. Mitchell*, (1895) 3 Okla. 177.

SEC. 7. [Authority, duties, compensation and expenses of trustees.] That the trustees appointed under this act shall have the power to administer oaths, to hear and determine all controversies arising in the execution of this act shall keep a record of their proceedings, which shall, with all papers filed with them and all evidence of their official acts, except conveyances, be filed in the General Land Office and become part of the records of the same, and all conveyances executed by them shall be acknowledged before an officer duly authorized for that purpose. They shall be allowed such compensation as the Secretary of the Interior may prescribe, not exceeding ten dollars per day while actually employed; and such traveling and other necessary expenses as the Secretary may authorize and the Secretary of the Interior shall also provide them with necessary clerical force by detail or otherwise. [26 Stat. L. 110.]

SEC. 8. [Appropriation.]

Joint Resolution To make the provisions of the act of May Fourteenth, One Thousand and Eight Hundred and Ninety, which provides for townsite entries of lands in a portion of what is known as Oklahoma applicable to the territory known as the "Cherokee Outlet" to make the provisions of said act applicable to townsites in the "Cherokee Outlet."

[*Res. No. 4, of Sept. 1, 1893, 28 Stat. L. 11.*]

[*Oklahoma town-site provisions made applicable to Cherokee Outlet.*] That all the provisions of an act of Congress, approved May Fourteenth, One Thousand and Eight Hundred and Ninety, which provides for townsite entries of lands in a portion of what is known as "Oklahoma," be, and the same are hereby made applicable to the territory known as the "Cherokee Outlet," and no part of the Territory of Oklahoma; and that all acts or parts of acts inconsistent with this joint resolution be and the same are hereby repealed. [28 Stat. L. 11.]

The Cherokee Outlet was opened to settlement by Proclamation No. 5, of Aug. 19, 1893, 28 Stat. L. 1222.

An Act To provide for the disposal of public reservations in vacated town sites or additions to town sites in the Territory of Oklahoma.

[*Act of May 11, 1896, ch. 168, 29 Stat. L. 116.*]

[**SEC. 1.**] [*Oklahoma — vacated town sites entered as homesteads or sold.*] That in all cases where a town site, or an addition to a town site, entered under the provisions of section twenty-two of an Act entitled "An Act to provide for a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," approved May second, eighteen hundred and ninety, shall be vacated in accordance with the laws of the Territory of Oklahoma, and patents for public reservations in such vacated town site, or addition thereto, have not been issued, it shall be lawful for the Commissioner of the General Land Office, upon an official showing that such town site, or addition thereto, has been vacated, and upon payment of the homestead price for such reservations, to issue a patent for such reservations to the original entryman. If the original entryman shall fail or neglect to make application for the reservations within six months from the vacation of such town site, or from the passage of this Act, the reservations shall be subject to disposal under the provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States as amended by the Act approved February twenty-sixth, eighteen hundred and ninety-five. [29 Stat. L. 116.]

R. S. sec. 2455, as amended, is given *infra*, div. XIX.

SEC. 2. [*Vacated town site sold by town or as isolated tract.*] That where a patent has already issued, or shall hereafter issue, for any such reservation in any town or municipality, such town or municipality, upon the vacation of such town site or addition thereto, as aforesaid, may sell the same at public or private sale to the highest bidder after thirty days' public notice of such sale, and convey said lands to the purchaser by proper deed of conveyance, and cover the proceeds of such sale into the school fund of such town or municipality: *Provided*, That where, by reason of the vacation of an entire town site and all its additions, the municipal organization has ceased to exist, the reservations in such vacated town site which may have been patented to the town or municipality, shall be disposed of as isolated tracts under the provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States, as amended.

by the Act approved February twenty-sixth, eighteen hundred and ninety-five. [29 Stat. L. 117.]

See note to section 1, *supra*.

SEC. 3. [*Repeal.*] That all laws and parts of laws, in so far as they conflict with this Act, are hereby repealed. [29 Stat. L. 117.]

[*Town-site trustees in Oklahoma abolished.*] * * * Payment to boards on town-site entries in Oklahoma: * * * That on January first, eighteen hundred and ninety-nine, the boards of trustees for town sites, and each of them in said Territory, shall cease and be abolished, and no compensation shall be allowed or paid to anyone, member, or trustee, or disbursing agent on or after January first, eighteen hundred and ninety-nine. And so much of the trust vested in said boards and heretofore initiated as shall remain unexecuted on said date shall be vested in the Commissioner of the General Land Office, who is hereby authorized and empowered to complete the same. * * * [30 Stat. L. 674.]

This is from the Deficiencies Appropriation Act of July 7, 1898, ch. 571.

The effect of this Act is to charge the commissioner of the general land office with the execution and completion of the trust formerly conferred upon the town-site boards; and, under the law, the commissioner cannot be sued as a trustee of such lands, for

the benefit of another, in any case where formerly the town-site trustees could not be sued. Under this Act the commissioner occupies the same relation to the general government and to others as the board of town-site trustees occupied before their retirement under the Act. *Hammer v. Hermann*, (1901) 11 Okla. 127.

An Act To supplement existing laws relating to the disposition of lands, and so forth.

[Act of March 3, 1901, ch. 846, 31 Stat. L. 1093.]

[SEC. 1.] [*Oklahoma — subdivision of ceded lands — opening to settlement and entry — town sites — disposal of lots — disposition of proceeds.*] That before the time for opening to settlement or entry of any of the lands in the Territory of Oklahoma, respectively ceded to the United States by the Wichita and affiliated bands of Indians, and the Comanche, Kiowa, and Apache tribes of Indians, under agreements respectively ratified by the Acts of March second, eighteen hundred and ninety-five, and June sixth, nineteen hundred, it shall be the duty of the Secretary of the Interior to subdivide the same into such number of counties as will, for the time being, best subserve the public interests, and to designate the place for the county seat of each county, and to set aside and reserve at such county seat, for disposition as herein provided, three hundred and twenty acres of land: *Provided*, That the Secretary of the Interior may attach any part of said lands to any adjoining county in said Territory.

The lands to be opened to settlement and entry under the Acts of Congress ratifying said agreements respectively shall be so opened by proclamation of the President, and to avoid the contests and conflicting claims which have heretofore resulted from opening similar public lands to settlement and entry, the President's proclamation shall prescribe the manner in which these lands may be settled upon, occupied and entered by persons entitled thereto under the Acts ratifying said agreements, respectively; and no person shall be permitted to settle upon, occupy or enter any of said lands except as prescribed in such proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry.

The lands so set apart and designated shall, in advance of the opening, be

surveyed, subdivided, and platted, under the direction of the Secretary of the Interior, into appropriate lots, blocks, streets, alleys, and sites for parks or public buildings, so as to make a town site thereof: *Provided*, That no person shall purchase more than one business and one residence lot. Such town lots shall be offered and sold at public auction to the highest bidder, under the direction of the Secretary of the Interior, at sales to be had at the opening and subsequent thereto. The receipts from the sale of these lots in the respective county seats shall, after deducting the expenses incident to the surveying, subdividing, platting, and selling of the same, be disposed of under the direction of the Secretary of the Interior in the following manner: A court-house shall be erected therewith at such county seat at a cost of not exceeding ten thousand dollars and the residue shall be applied to the construction of bridges, roads, and such other public improvements as the Secretary of the Interior shall deem appropriate, including the payment of all expenses actually necessary to the maintenance of the county government until the time for collecting county taxes in the calendar year next succeeding the time of the opening. No indebtedness of any character shall be contracted or incurred by any of said counties prior to the time for collecting county taxes in the calendar year next succeeding the opening, excepting where the same shall have been authorized by the Secretary of the Interior.

Provided further, That the Secretary of the Interior be, and he is hereby, authorized, out of the proceeds of the sales of town lots in the towns of Lawton, Comanche County; Anadarko, Caddo County, and Hobart, Kiowa County, in the Territory of Oklahoma, heretofore had pursuant to the authority of the Act aforesaid, to cause to be expended, subject to his control and supervision and upon the recommendation of the legally constituted authorities of each of said towns, for the construction of public waterworks, schoolhouses, and such other municipal improvements as may be advisable and advantageous to the inhabitants of said towns, the following additional sums, to wit: For the town of Lawton, one hundred and fifty thousand dollars; for the town of Anadarko, sixty thousand dollars, and for the town of Hobart, fifty thousand dollars: *Provided further*, That the sum of ten thousand dollars, as provided in the Act whereof this is amendatory, for the construction of a county court-house in each of the towns aforesaid, shall be, and hereby is, increased to the sum of thirty thousand dollars each for the construction of such county court-houses in each town. [31 Stat. L. 1093, 32 Stat. L. 506.]

This section was amended by the Act of June 30, 1902, ch. 1326, 32 Stat. L. 506, by adding the last two provisos above set out.

SEC. 2. [*Temporary county and township officers.*] The governor of the Territory shall appoint and commission for each county all county and township officers made necessary by the laws of the Territory of Oklahoma, who shall hold their respective offices until the officers elected by the people at the general election next following the opening shall have qualified. [31 Stat. L. 1094.]

SEC. 3. [*Additional land districts.* See *supra*, p. 272.]

An Act Providing for the commutation for town-site purposes of homestead entries in certain portions of Oklahoma.

[Act of March 11, 1902, ch. 180, 32 Stat. L. 63.]

[*Commutation for town-sites of homestead entries in Oklahoma.*] That that portion of section twenty-two of the Act approved May second, eighteen

hundred and ninety, entitled "An Act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," providing for the commutation for town-site purposes of homestead entries in certain instances, be, and the same is hereby, made applicable to the lands in the Territory of Oklahoma ceded to the United States by the Wichita and affiliated bands of Indians and the Comanche, Kiowa, and Apache tribes of Indians, under agreements, respectively, ratified by the Acts of Congress of March second, eighteen hundred and ninety-five, and June sixth, nineteen hundred. [*32 Stat. L. 63.*]

[IX. SURVEY OF THE PUBLIC LANDS.]

Sec. 2395. [*Rules of survey.*] The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, to as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require.

Second. The corners of the townships must be marked with progressive numbers from the beginning; each distance of a mile between such corners must be also distinctly marked with marks different from those of the corners.

Third. The townships shall be subdivided into sections, containing, as nearly as may be, six hundred and forty acres each, by running through the same, each way, parallel lines at the end of every two miles; and by making a corner on each of such lines, at the end of every mile. The sections shall be numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternately through the township with progressive numbers till the thirty-six be completed.

Fourth. The deputy surveyors, respectively, shall cause to be marked on a tree near each corner established in the manner described, and within the section, the number of such section, and over it the number of the township within which such section may be; and the deputy surveyors shall carefully note, in their respective field-books, the names of the corner-trees marked and the numbers so made.

Fifth. Where the exterior lines of the townships which may be subdivided into sections or half-sections exceed, or do not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half-sections in such township, according as the error may be in running the lines from east to west, or from north to south; the sections and half-sections bounded on the northern and western lines of such townships shall be sold as containing only the quantity expressed in the returns and plats respectively, and all others as containing the complete legal quantity.

Sixth. All lines shall be plainly marked upon trees, and measured with chains, containing two perches of sixteen and one-half feet each, subdivided into twenty-five equal links; and the chain shall be adjusted to a standard to be kept for that purpose.

Seventh. Every surveyor shall note in his field-book the true situations of all mines, salt licks, salt springs, and mill-seats which come to his knowledge;

all water-courses over which the line he runs may pass; and also the quality of the lands.

Eighth. These field-books shall be returned to the surveyor-general, who shall cause therefrom a description of the whole lands surveyed to be made out and transmitted to the officers who may superintend the sales. He shall also cause a fair plat to be made of the townships and fractional parts of townships contained in the lands, describing the subdivisions thereof, and the marks of the corners. This plat shall be recorded in books to be kept for that purpose; and a copy thereof shall be kept open at the surveyor-general's office for public information, and other copies shall be sent to the places of the sale, and to the General Land-Office. [R. S.]

Act of May 18, 1796, ch. 29, 1 Stat. L. 465; Act of May 10, 1800, ch. 55, 2 Stat. L. 73.

Sections 2395-2413 constitute chapter 9 of title 32, of the Revised Statutes, entitled as above.

Surveys of abandoned military reservations. — See *infra*, div. XIV.

Object of statute—seventh and eighth subdivisions. — The Act of Congress, as long ago as 1796, provided that "every surveyor shall note in his field-book the true situation of all mines, salt-licks, salt-springs, and mill-seats which shall come to his knowledge."

* * * These field-books shall be returned to the surveyor-general, who shall thereupon cause a description of the whole lands surveyed to be made out, and transmitted to the officers who may superintend the sales." *Cowell v. Lammers*, (1884) 21 Fed. Rep. 200. In this case the court said: "The object, doubtless, is to enable the officers in charge to determine whether the lands are patentable or not. This provision has been in force ever since, and it was carried into the Revised Statutes (sec. 2395). * * * Thus the government has provided means to enable the land office to determine the character of the lands, and whether or not they are of the character granted by the acts, or authorized to be sold or otherwise disposed of."

Validity of saline entries. — The Act of May 18, 1796, required every surveyor to note in his field book the true situation of all mines, salt licks, and salt springs, and reserved for the future disposal of the United States every salt spring which should be discovered. The policy of the government since the acquisition of the Northwest Territory and the inauguration of our land system, to reserve salt springs from sale, has been uniform. This policy renders an entry void where salines had been noted on the field-books and where they were palpable to the eye. *Morton v. Nebraska*, (1874) 21 Wall. (U. S.) 660.

Meaning of terms "salt lick" and "salt spring." — The terms "salt lick" and "salt spring" seem to be used in the Acts of Congress as synonymous. A "salt lick" is so called in the western country from the fact that deer and other wild animals resort to it and lick or drink the brackish water. In this respect no distinction is perceived between a "lick" as frequently used and a "salt spring." *Indiana v. Miller*, (1843) 3 McLean (U. S.) 151, 13 Fed. Cas. No. 7,022.

Examination or exploration for mineral deposits is not included in the ordinary surveys of the public lands, the surveyor being only required "to note in his field-book the true situation of all mines, salt-licks, salt-springs, and mill-seats, which come to his knowledge." *U. S. v. Smith*, (1882) 11 Fed. Rep. 487.

Basis of system of surveys. — The Act of May 18, 1796, the first to authorize a sale of the domain ceded by Virginia, is the basis of our present rectangular system of surveys. *Morton v. Nebraska*, (1874) 21 Wall. (U. S.) 660.

"The settled policy of Congress has been to survey the public lands in square figures, running the lines north and south and east and west, and to extend the subdivisions authorized by law, as far as practicable, in square figures, to the lowest denomination." *Brown v. Clements*, (1845) 3 How. (U. S.) 663.

The statutes are general in their terms, which relate to the survey of the public lands, and many things are left to the direction of the surveyor-general and the land department. *Goltermann v. Schiermeyer*, (1892) 111 Mo. 404.

The power to make and correct surveys of the public lands belongs to the political department of the government. While the lands are subject to the supervision of the general land office, the decisions of that bureau in all such cases, like that of other special tribunals upon matters within their exclusive jurisdiction, are unassailable by the courts, except by a direct proceeding; and the courts have no concurrent or original power to make such corrections. *Cragin v. Powell*, (1888) 128 U. S. 691.

The courts can neither correct nor make surveys. — The power to correct or make surveys is reposed in the political department of the government, and the land department, charged with the duty of surveying the public domain, must primarily determine what are public lands subject to survey and disposal under the public-land laws. Possessed of the power, its exercise of jurisdiction cannot be questioned by the courts before it has taken final action. *Kirwan v. Murphy*, (1903) 189 U. S. 35.

The courts have power to protect the rights of a party who has purchased in good faith from the government, against the interferences or appropriations of corrective surveys made by the land department subse-

quently to a disposition or sale, when the land department has once made and approved a governmental survey of public lands, and the plats, maps, field-notes, and certificates are filed in the proper office, and the government has sold or disposed of such lands. *Cragin v. Powell*, (1888) 128 U. S. 691.

Land department's power to order survey — injunction. — It appeared in a certain case that no survey had been made, that no meander line was in fact run, and that no body of water in fact existed near a false meander line indicated. The meander line purporting to delimit a lake was a mile or more from the lake, and was run over high agricultural land, covered with ancient trees, which could not have grown in water. The land department held that the land lying between the alleged meander line and the lake was government land and ordered it to be surveyed. The execution of that order was restrained by an injunction on the theory that the government was estopped by the pretended survey and plat to deny that the land was bounded by the lake, but the court held, however, that it was for the land department to determine what are public lands, what lands have been surveyed, what are to be surveyed, what have been disposed of, what remain to be disposed of, and what are reserved, and the land department could not be stayed in the performance of its duty. The court also held that equity would not enjoin a government survey of lands where the proposed survey would be but a fugitive and temporary trespass, lacking the elements of irreparable mischief and of such long continuance as to become a nuisance. *Kirwan v. Murphy*, (1903) 189 U. S. 35.

Conclusiveness of surveys. — The description of land, and plat of the original government survey filed in the general land office, as made by the surveyor-general from the field-notes, are conclusive, and the section lines and corners as laid down in the description and plat are binding upon the general government and upon all other parties concerned. *Tolleston Club v. State*, (1894) 141 Ind. 197. See also *Horne v. Smith*, (1895) 159 U. S. 40.

Where the official plat and the approved survey of a township located premises in controversy in the northeast quarter of a section, and the patent under which the plaintiff claimed the land described it as the southeast quarter of the section, "according to the official plat of the survey returned to the general land office by the surveyor-general," it was held that neither parol evidence nor a private survey could be shown to establish that the premises were located in the southeast quarter of the section. *Chapman v. Polack*, (1886) 70 Cal. 487.

Sufficient determination of character of land. — It is a sufficient determination that school lands are mineral in their character, in order to give the state the right to select other lands as an indemnity, where the lands surveyed are certified by a deputy surveyor to be of a mineral character and the surveyor-general and the commissioner of the general land office approve of the field notes

and plats which are filed in the land office. *Johnston v. Morris*, (C. C. A. 1896) 72 Fed. Rep. 890.

A survey is sufficient, under the above section, which runs at intervals of two miles parallel lines each way, and makes a corner on each line at the end of every mile, and which is completed under section 2396, by running straight lines from the established corners to the opposite corresponding corners, and, where no such opposite or corresponding corners have been or can be fixed, by running from the established corners due north and south, or east and west, as the case may be, to the watercourse or other external boundary of such fractional township; and such limit of survey extends over both land and water. *Kean v. Roby*, (1896) 145 Ind. 221.

Under subdivision 3 of the above section and subdivision 2 of section 2396, a government survey which as a matter of fact runs the section lines every two miles across swamp lands and marks the corners on each line at the end of every mile, is a legal survey. *Tolleston Club v. State*, (1894) 141 Ind. 197.

Completion of survey. — It is not necessary that the whole township be surveyed at one time, and often different parts of the township are surveyed at different times. But no survey of any part is completed until the lines and corners about that part are run and established as required by the statute. Even after a principal meridian and a base line have been established, and the exterior lines of the township have been surveyed, neither the sections nor their subdivisions can be said to have any existence until the township is subdivided into sections and quarter-sections by an approved survey. The lines are not ascertained by the survey, but they are created. *Bullock v. Rouse*, (1889) 81 Cal. 590; *Robinson v. Forrest*, (1865) 29 Cal. 318.

When lands are considered surveyed. — Lands are not surveyed lands by the United States until a certified copy of the official plat of survey has been filed in the local land office. *U. S. v. Curtner*, (1889) 38 Fed. Rep. 1.

In *Oakley v. Stuart*, (1878) 52 Cal. 521, the court said that "under the public land system and practice of the land department of the United States, lands have always been treated as surveyed when the lines were run in the field, and monuments or markers established by the proper surveyor." The above dictum was overruled in *Medley v. Robertson*, (1880) 55 Cal. 396, wherein it was held that the approval of the surveyor-general is necessary to constitute a survey.

When lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions, and landmarks, becomes as much a part of the grant or deed by which they are conveyed, and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself. *Cragin v. Powell*, (1888) 128 U. S. 691; *Jefferis v. East Omaha Land Co.*, (1890) 134 U. S. 178; *Chapman v. Polack*,

(1886) 70 Cal. 487; *Goltermann v. Schiermeyer*, (1892) 111 Mo. 404.

Meander lines.—Generally, meander lines are lines which course the banks of navigable streams and other navigable waters; however, where it appeared from the field notes and plat of the surveyor that he stopped his surveys at a marsh bordering Lake Erie, and that the surveys were approved and a plat prepared based upon the surveys and field notes, it was held that patents which referred in terms to the survey and plat clearly disclosed the fact that the government did not convey any land which was a part of the marsh. The court said: "It may be remarked in passing that the letter of the statute would not limit the surveys to the shores of the lake, for section 2395 R. S. declares that surveys shall be by running lines at right angles 'so as to form townships of six miles square, unless where the line of an Indian reservation or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require.' But Lake Erie is not an Indian reservation, nor a tract of land heretofore surveyed and patented, nor a navigable river. It is true section 2396, which provides how the boundaries and contents of the several sections, half sections and quarter sections of the public lands of the United States shall be ascertained, says, after stating the rule where all the corners are established, that 'in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township.' If this recognizes any other external boundary than that which is indicated in section 2395, it does not prescribe what that external boundary shall be; and if the land department treats either a marsh or a lake as such external boundary, who can declare that its action is void?" *Niles v. Cedar Point Club*, (1899) 175 U. S. 300, *affirming* (C. C. A.) 85 Fed. Rep. 45.

See also *Horne v. Smith*, (1895) 159 U. S. 40, wherein it was held that a survey terminated at a meander line bordering on a bayou of a river and that the land extending to the main body of the river between the termination of the survey and the river could not be claimed. The court said that although land is unsurveyed "it does not follow that a patent for the surveyed tract adjoining carries with it the land which, perhaps, ought to have been, but which was not in fact, surveyed. The patent conveys only the land which is surveyed, and when it is clear from the plat and the surveys that the tract surveyed terminated at a particular body of water, the patent carries no land beyond it."

The meander line is not a line of boundary, but one designed to point out the sinuosities of the bank of the stream, and as a means

of ascertaining the quantity of land in the fraction which is to be paid for by the purchaser. *Horne v. Smith*, (1895) 159 U. S. 40; *St. Paul, etc., R. Co. v. Schurmeir*, (1868) 7 Wall. (U. S.) 272; *Kirby v. Potter*, (1903) 138 Cal. 686; *Tolleston Club v. State*, (1894) 141 Ind. 197; *Heald v. Yumisko*, (1898) 7 N. Dak. 423; *Knudsen v. Omanson*, (1894) 10 Utah 124.

A patent from the United States of a surveyed fractional government subdivision, bounded on a meandered lake, conveys the land to the lake, although the meander line of the survey is found not to be coincident with the shore line. The purchaser is not estopped to assert that his title extends to the lake, and beyond the meander line. *Everson v. Waseca*, (1890) 44 Minn. 247.

The making of a meander line has no certain significance.—It does not necessarily import that the tract on the other side of it is not surveyed or will not pass by a conveyance of the upland shown by the plat to border on the lake. It is not always a boundary. Its immediate import may be only to indicate the contour of a lake. *Kean v. Calumet Canal, etc., Co.*, (1903) 190 U. S. 453, *following* *Hardin v. Jordan*, (1891) 140 U. S. 371; *Mitchell v. Smale*, (1891) 140 U. S. 406, and holding that the state of *Indiana* acquired the submerged land up to the line of the state under the Swamp Land Act of Sept. 28, 1850, by a patent which described the whole of fractional sections enumerated and bordering on non-navigable water and extending to the state line. It was also held that a resurvey by the United States after the lands were conveyed could not affect the rights of a party claiming through mesne conveyances from the state.

Meander line does not necessarily bound water.—Where it was urged that because a meander line was run this amounted to a determination by the land department that certain surveyed fractional sections bordered upon a body of water, navigable or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights, and this contention was made in the face of the express declaration of the field notes and plat, that the space of ground beyond the surveyed sections was "flag marsh" or "impassable marsh and water," the court said, "There is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forest or prairie, land or water, government or Indian reservation." *Niles v. Cedar Point Club*, (1899) 175 U. S. 300. See also *Horne v. Smith*, (1895) 159 U. S. 40; *French-Glenn Live Stock Co. v. Springer*, (1902) 185 U. S. 47.

In the subdivision of fractional townships there is no law or practice which authorizes a subdivision into sections otherwise than as provided by the fifth subdivision of the above section. *Ogilvie v. Copeland*, (1893) 145 Ill. 98.

Townships are fractional when the outer boundary lines cannot be carried out in full because of a watercourse, Indian boundary,

or some other external interference. *Goltermann v. Schiermeyer*, (1892) 111 Mo. 404.

A congressional township of thirty-six sections does not necessarily contain thirty-six times six hundred and forty acres. *Springer Land Assoc. v. Ford*, (1897) 168 U. S. 513.

Duty of surveyor to calculate contents of irregular subdivisions.—Section 2395 provides that, where townships which are subdivided exceed or do not extend six miles, the excess or deficiency shall be specially noted and added to or deducted from the western and northern ranges of sections or half sections; and that these irregular sections and half sections shall be sold as containing only the quantity expressed in the returns and plats, and all others as containing the legal quantity. It is, therefore, the duty of the surveyor not only to note this excess or deficiency, but to calculate the contents of these irregular subdivisions, and to note the quantity on the surveys returned. *Goltermann v. Schiermeyer*, (1892) 111 Mo. 404.

Field notes as evidence.—The field notes are competent evidence and rank as the deposition of a surveyor, charged under oath with the duty of noting on the spot, and at the time he makes the survey, the quality of the land. *Kirby v. Lewis*, (1889) 39 Fed. Rep. 66.

Lost corner—inconsistent field notes.—Where a government corner is lost or obliterated, so that resort must be had to the government field notes for the purpose of determining its location, but the field notes are inconsistent, and cannot be reconciled, there is no universal rule that certain ones shall be preferred to the others, but, as in a case where living witnesses contradict each other, those should be accepted as correct which, under all the circumstances, are most entitled to credit, and most likely to be in accordance with the actual facts. A witness or bearing tree is not an established corner, but merely a designated object from which, in connection with the field notes, the location of the corner may be ascertained. *Stadin v. Helin*, (1899) 76 Minn. 496.

Where there is a variance between the plat and the field notes of an original government survey, the plat must control. *Beaty v. Robertson*, (1891) 130 Ind. 589.

The field notes and plat are presumed to be correct, unless the contrary is shown. They are important in ascertaining where

monuments are located; but if the location of a monument is clearly shown by other evidence to be at a distance different from that given in the field notes and plat, they must give way. *Ogilvie v. Copeland*, (1893) 145 Ill. 98.

The courts take judicial notice of the system of surveys established by the United States and the base lines, meridians, townships, and ranges thereby established; also the relative positions of the sections in the townships. *Bittle v. Stuart*, (1879) 34 Ark. 224; *Dickenson v. Breeden*, (1863) 30 Ill. 279; *Gooding v. Morgan*, (1873) 70 Ill. 275; *Jordan Ditching, etc., Assoc. v. Wagoner*, (1870) 33 Ind. 50; *Bannister v. Grassy Fork Ditching Assoc.*, (1875) 52 Ind. 178; *Murphy v. Hendricks*, (1877) 57 Ind. 593; *Prieger v. Exchange Mut. Ins. Co.*, (1858) 6 Wis. 89; *Atwater v. Schenck*, (1850) 9 Wis. 160.

A designation of lands as "my forty," located at a certain place in a named county, was held to sufficiently describe the land in a contract of conveyance. The court said: "By 'forty,' thus used in connection with lands, is meant either the north or south half of a half of a quarter section of land. The statutes of the United States authorize the division of each quarter section of land into east and west halves, by a line drawn through it north and south, equidistant between the east and west corners of the quarter sections; and further provide for the subdivision of such half quarter sections into north and south halves, by a line run through the middle of them, east and west. Sections 2395, 2397, Rev. Stat. This subdivision of a half quarter section is the smallest subdivision of an entire or regular section of land recognized by the United States statutes. It usually contains about 40 acres, as does an entire section about 640 acres, or a half of a quarter section about 80 acres, and a quarter section about 160 acres. Theoretically, an entire section should contain 640 acres, and the above-mentioned smallest subdivision 40 acres, but, on account of inaccuracies of surveys, they both often fall a few acres short; yet the term 'forty,' whether such subdivisions contain 40 acres or less, has in this state [Florida] become as fixed and well understood a term to designate them as ever attached from common or general use to anything." *Lente v. Clarke*, (1886) 22 Fla. 515.

Sec. 2396. [*Boundaries and contents of public lands, how ascertained.*] The boundaries and contents of the several sections, half-sections, and quarter-sections of the public lands shall be ascertained in conformity with the following principles:

First. All the corners marked in the surveys, returned by the surveyor-general, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

Second. The boundary-lines, actually run and marked in the surveys returned by the surveyor-general, shall be established as the proper boundary-

lines of the sections, or subdivisions, for which they were intended, and length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary-lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed the boundary-lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary-line, or other external boundary of such fractional township.

Third. Each section or subdivision of section, the contents whereof have been returned by the surveyor-general, shall be held and considered as containing the exact quantity expressed in such return; and the half-sections and quarter-sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part. [R. S.]

Act of Feb. 11, 1805, ch. 14, 2 Stat. L. 313.

Where the water line is a boundary of a named lot, that line remains the boundary, no matter how it shifts by accretion, and a deed which describes the lot by number or name conveys the land up to the shifting line, exactly as it does up to the fixed side line. So long as the doctrine of accretion applies, the water line, if named as the boundary, continues to be the boundary, no matter how much it may shift, and the deed of the lot carries all to such line. *East Omaha Land Co. v. Jeffries*, (1889) 40 Fed. Rep. 386, affirmed (1890) 134 U. S. 178.

Character of land determined by survey.

— Where a marsh bordering on a lake was surveyed by the general government and was conveyed to a state under the Swamp Land Act, and was then conveyed by the state to a private party, the court held that the character of the marsh as land, as distinguished from the bed of the lake, was conclusively established. It was also held that the purchaser owned the land up to the meander line and was entitled to restrain, within the limits of his holding, the hunting of game. *Brown v. Parker*, (1901) 127 Mich. 390.

Method of establishing centre of section.

— A section of land was surveyed and disposed of by the general government without establishing the centre of the section. There was a controversy concerning whether the "bisecting" method or the "intersecting" method should be adopted. The former method consists of running a line from the quarter corner on the east to the quarter corner on the west side of the section, or *vice versa*, and the point half way on the line between the quarter corners is the centre. By the latter method straight lines are run from the quarter corner on the east to the quarter corner on the west and from the quarter corner on the south to the quarter corner on the north side of the section, the centre being the point where the two lines cross. By the instructions of the land department of the general government to government surveyors and the decision of that department, the Act of

Feb. 11, 1805, recognized and provided for "intersecting" method of ascertaining centre of sections, where the centre lines had not been run in the original surveys. By Code of Iowa, section 373, it is provided: "In the resurvey and subdivisions of lands by county surveyors, their deputies, or other persons, the rules prescribed by Acts of Congress and the instructions of the secretary of the interior shall be, in all respects, followed." The court held that, in view of this statute requiring surveyors to follow the Act of Congress and the construction placed thereon by the secretary of the interior, and in view of the fact that, at the time this Act of Congress was passed, the secretary of the interior had determined that the Act of Congress provided for the intersecting method of ascertaining the centre of a section, the construction adopting that method must be followed. *Gerke v. Lucas*, (1894) 92 Id. 79.

Quantity of land controlled by boundaries.

— The grant of all lands presupposes an actual survey of them, and the patent must be considered as conveying the land actually surveyed. When it can be shown that a line was actually run, or division made, by the surveyor in surveying the land, and that such line or division was marked by corners or natural objects, and such survey is established, the grantee in a patent will take according to such actual survey notwithstanding any mistaken description in the patent to courses and distances contained therein or the quantity of land stated to be conveyed. In accordance with the letter and spirit of the above section, the quantity of land contained in a patent may be considered in ascertaining the extent of the grant in area, but cannot control the actual boundary limits of the land as located on the ground by the original government survey. The boundaries actually located by the original survey must, when established, control in ascertaining the quantity of land contained in a patent; and the same is true of a deed unless a clear intent to the contrary is expressed therein.

Stonewall Phosphate Co. v. Peyton, (1897) 39 Fla. 726.

Subdivision of fractional sections.—Where, owing to meandered lakes, but one quarter corner post was established upon the ground on the boundary lines of a certain section, which post was on the south line thereof, the division line between the southeast and southwest quarters of the section must be ascertained by running a line due north from the quarter post to the meandered lake upon the north side of the section. *Beardsley v. Crane*, (1893) 52 Minn. 537.

The true corner of a governmental subdivision of land is where the United States surveyors in fact established it. *Beardsley v. Crane*, (1893) 52 Minn. 537.

How lost corners should be found.—Where surveyors surveyed from the north to the south as the field notes indicated that the government surveyors ran their lines, the court said, in *Ogilvie v. Copeland*, (1893) 145 Ill. 98, concerning this method of finding lost corners: "That, undoubtedly, was the better way to run to find the location of the lost corners; but, if the corners were found, it can be of no consequence in what direction the lines between them were run, since * * * they control as to corners, distances, and quantities."

When the measurement of the line as returned does not agree with the distance between the corners established, and between which it is assumed to be the measurement, it must be disregarded. Monuments control as to courses and distances. *Ogilvie v. Copeland*, (1893) 145 Ill. 98.

Lines are established by law.—According to the provisions contained in the above section, the lines of subdivisions, as well as sections, are established by law. *Chapman v. Polack*, (1886) 70 Cal. 494; *Hughes v. Wheeler*, (1888) 76 Cal. 230.

The provision of the third subdivision of the above section, which declare that "each section or subdivision of section the contents of which have been returned by the surveyor-general, shall be held and considered as containing the exact quantity expressed in such return," was intended to fix the exact quantity at which the general government should dispose of the tract, and it was not intended to declare that every surveyed tract of land must, regardless of mistakes and inaccuracies, however pronounced, be forever held and considered, in conveyances between private parties, to contain the exact quantity specified in the government survey. *Heald v. Yumisko*, (1898) 7 N. Dak. 423.

Sec. 2397. [*Lines of division of half quarter-sections, how run.*] In every case of the division of a quarter-section the line for the division thereof shall run north and south, and the corners and contents of half quarter-sections which may thereafter be sold, shall be ascertained in the manner and on the principles directed and prescribed by the section preceding, and fractional sections containing one hundred and sixty acres or upwards shall in like manner as nearly as practicable be subdivided into half quarter-sections, under such rules and regulations as may be prescribed by the Secretary of the Interior, and in every case of a division of a half quarter-section, the line for the division thereof shall run east and west, and the corners and contents of quarter quarter-sections, which may thereafter be sold, shall be ascertained as nearly as may be, in the manner, and on the principles, directed and prescribed by the section preceding; and fractional sections containing fewer or more than one hundred and sixty acres shall in like manner, as nearly as may be practicable, be subdivided into quarter quarter-sections, under such rules and regulations as may be prescribed by the Secretary of the Interior. [R. S.]

Act of April 24, 1820, ch. 51, 3 Stat. L. 566; Act of April 5, 1832, ch. 65, 4 Stat. L. 503.

A forty-acre lot created by the operation of the Act of April 5, 1832, was held not to be such a legal subdivision in contemplation of a case where the improvement was on a fractional section over 160 acres, in which

situation the claimant could enter, in conformity with the legal subdivision recognized by the Acts of 1830 and 1834, a quantity of land not exceeding 160 acres, and could not be taken in addition to the fractional quarter containing the pre-emptor's improvement. (1838) 3 Op. Atty.-Gen. 313.

[Sec. 1.] [*What lines to be established by Commissioner of Land Office, and what by Geological Survey.*] * * * That hereafter all standard, meander, township, and section lines of the public land surveys shall, as heretofore, be established under the direction and supervision of the Commissioner of the General Land Office, whether the lands to be surveyed are within or with-

out reservations, except that where the exterior boundaries of public for reservations are required to be coincident with standard, township, or section lines such boundaries may, if not previously established in the ordinary course of the public land surveys, be established and marked under the supervision of the Director of the United States Geological Survey whenever necessary to complete the survey of such exterior boundaries. * * * [30 Stat. 1097.]

This is from the Sundry Civil Appropriation Act of March 3, 1899, ch. 424.

Sec. 2398. [*Contracts for surveys of public lands, when binding.*] Contracts for the survey of the public lands shall not become binding upon the United States until approved by the Commissioner of the General Land-Office except in such cases as the Commissioner may otherwise specially order. [R. S.]

Act of May 30, 1862, ch. 86, 12 Stat. L. 409.

Prior to the Act of May 30, 1862, 12 Stat. L. 409, a surveyor-general had authority to enter into contracts without their first being approved by the commissioner of the general land office. Where a contract partly per-

formed was terminated by the government without the consent of the contractor, the contract price was held not to be the measure of damages, nor could the contractor recover damages by completing the work. McKee Case, (1865) 1 Ct. Cl. 336.

Sec. 2399. [*What instructions to be deemed part of contract.*] The printed manual of surveying instructions for the survey of the public lands of the United States and private land claims, prepared at the General Land Office, and bearing date January first, nineteen hundred and two, the instructions of the Commissioner of the General Land Office, and the special instructions of the surveyor-general, when not in conflict with said printed manual or the instructions of said Commissioner, shall be taken and deemed to be a part of every contract for surveying the public lands of the United States and private land claims. [R. S.]

Act of May 30, 1862, ch. 86, 12 Stat. L. 409.

This section was amended to read as above by the Act of April 26, 1902, ch. 592, 32 Stat. L. 120. As originally enacted it provided in the same terms that the manual of Feb. 22, 1855, should be deemed a part of the contract, and did not contain the last four words. It was amended by Act of Oct. 1, 1890, ch. 1262, 26 Stat. L. 650, by providing that the manual of Dec. 2, 1889, should be taken as part of the contract, and by adding the words "and private land claims." It was again amended by Act of Aug. 15, 1894, ch. 288, 28 Stat. L. 285, by providing that the manual of June 30, 1894, should be taken as a part of the contract. It was again amended as stated above to read as given in the text.

Under the Act of May 30, 1862, 12 Stat. L. 409, sec. 2, a surveyor-general could not issue special instructions to a surveyor in conflict with the manual of the land office. Such erroneous instructions would form no part of the contract. The commissioner of the land office had power to depart from the requirements of the manual, but authority

from him to that effect could not be implied. Where a surveyor in good faith followed special instructions of a surveyor-general who conflicted with the manual of the land office it was held that he could not, on the one hand, recover for his work, nor on the other be compelled to obliterate the erroneous survey; and if, pursuant to an order of the commissioner, he did obliterate it, an implied contract arose, and he could recover quantum meruit. White's Case, (1879) Ct. Cl. 305.

When extrinsic evidence is admissible. Since the "special instructions" of the commissioner of the land office were made by statute a part of every contract for the survey of public lands, when the terms of the contract contained one description of the tract to be surveyed and the special instructions another, resort could be had to extrinsic evidence to ascertain the extent of the subject-matter of the contract in the true intent of the parties. Bowles's Case, (1871) 7 Ct. Cl. 454.

Sec. 2400. [*Prices of surveys, how established.*] The Commissioner of the General Land-Office has power, and it shall be his duty, to fix the prices per mile for public surveys, which shall in no case exceed the maximum established by law; and, under instructions to be prepared by the Commissioner, an accurate

account shall be kept by each surveyor-general of the cost of surveying and platting private land-claims, to be reported to the General Land-Office, with the map of such claim, and patents shall not issue for any such private claim until the cost of survey and platting has been paid into the Treasury by the claimant. [R. S.]

Act of May 30, 1862, ch. 86, 12 Stat. L. 409.

Repeal in part, see following text.

[SEC. 1.] *[Repeal of provision requiring payment before patent issues for private land claim.]* * * * That the provisions of the third section of the act entitled "An act to reduce the expenses of the survey of the public lands in the United States," approved May thirtieth, eighteen hundred and sixty-two, requiring that the cost of survey and platting shall be paid by the claimant for any private land claim before a patent therefor shall be issued, be, and the same is hereby repealed. * * * [18 Stat. L. 384.]

This is from the Sundry Civil Appropriation Act of March 3, 1875, ch. 130.

The provisions of Act of May 30, 1862, ch. 86, sec. 3, mentioned in the text are incor-

porated into Revised Statutes as section 2400.

See provisions superseding the above in the following text.

[Payment of cost of surveys of private land claims and railroad land grants.] * * * That an accurate account shall be kept by each surveyor-general of the cost of surveying and platting every private land claim to be reported to the General Land Office with the map of such claim; and that a patent shall not issue nor shall any copy of any such survey be furnished for any such private claim until the cost of survey and platting shall have been paid into the Treasury of the United States by the party or parties in interest in said grant or by any other party: *And provided further,* That before any land granted to any railroad company by the United States shall be conveyed to such company, or any persons entitled thereto under any of the acts incorporating or relating to said company, unless such company is exempted by law from the payment of such cost, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or persons in interest. * * * [19 Stat. L. 121.]

This is from the Sundry Civil Appropriation Act of July 31, 1876, ch. 246.

[Cost of survey of private land claim to be paid before delivery of patent.] * * * That hereafter in all cases of the survey of private land claims the cost of the same shall be refunded to the Treasury by the owner before the delivery of the patent. * * * [23 Stat. L. 499.]

This is from the Sundry Civil Appropriation Act of March 3, 1885, ch. 360.

An act to provide for taxation of railroad-grant lands, and for other purposes.

[Act of July 10, 1886, ch. 764, 24 Stat. L. 143.]

[SEC. 1.] *[Surveyed lands of railroad grants not exempt from taxation — tax sale — lien for costs of surveying.]* That no lands granted to any railroad corporation by any act of Congress shall be exempt from taxation by States, Territories, and municipal corporations on account of the lien of the United

States upon the same for the costs of surveying, selecting, and conveying the same, or because no patent has been issued therefor; but this provision shall not apply to lands unsurveyed: *Provided*, That any such land sold for taxes shall be taken by the purchaser subject to the lien for costs of surveying, selecting, and conveying, to be paid in such manner by the purchaser as the Secretary of the Interior may by rule provide and to all liens of the United States, all mortgages of the United States, and all rights of the United States in respect of such lands: *Provided further*, That this act shall apply only to lands situated opposite to and coterminous with completed portions of said roads, and in organized counties: *Provided further*, That at any sale of lands under the provisions of this act the United States may become a preferred purchaser, and in such case the lands sold shall be restored to the public domain and disposed of as provided by the laws relating thereto. [24 Stat. L. 143.]

Taxation of surveyed unpatented lands prior to Act of July 10, 1886.—As to surveyed but unpatented lands, on which the costs of survey had not been paid, it was held that, although lands sold by the United States might be taxed before the government parted with the legal title by issuing the patent, this principle was to be understood as applicable only to cases where the right to the patent was complete, and the equitable title fully vested, without anything more to be paid, or any act done going to the foundation of the right; and hence, where there had been a grant to a railroad company, if prepayment by the grantee of the cost of surveying the lands granted was required by the statute making the grant, before any of the lands should be conveyed, no title vested in the grantee, and the state could not levy taxes on the land, and under such levy sell and make a title which might defeat the lien of the United States. *Kansas Pac. R. Co. v. Prescott*, (1872) 16 Wall. (U. S.) 603; *Union Pac. R. Co. v. McShane*, (1874) 22 Wall. (U. S.) 444; *Northern Pac. R. Co. v. Traill County*, (1885) 115 U. S. 600. See also *Central Pac. R. Co. v. Nevada*, (1896) 162 U. S. 512; *Northern Pac. R. Co. v. Myers*, (1899) 172 U. S. 589.

Effect of Act.—The above Act delegated to the states and territories the right to tax the lands granted to railroad companies notwithstanding they had not paid into the treasury of the United States the costs of surveying and selecting, the government taking the chances of collecting such costs from the purchaser at the tax sale. *State v. Central Pac. R. Co.*, (1889) 20 Nev. 372.

Since the Act of Congress of July 10, 1886, the surveyed but unpatented lands within the grant to the Central Pacific railroad are no longer exempt from taxation by reason of the government lien thereon for the costs of surveying, etc. The conditions contained in that Act, to the effect that the lien shall continue, and that the United States may become a preferred purchaser at any tax sale of such land, control such sales, and there is no necessity for a legislative acceptance by the states of the conditions of the Act. Congress having full control over the public domain may make it subject to state taxation upon such conditions as are deemed proper, and then if so taxed it must be done

subject to those conditions. The Act of July 10, 1886, is a grant to the states of the right to tax lands in which the United States still has such an interest as renders them exempt, and being beneficial, its acceptance by the grantee will be presumed. *State v. Central Pac. R. Co.*, (1892) 21 Nev. 247.

When lands granted to a railroad company "within indemnity limits" are required by law to be selected by the grantee "under the direction of the secretary of the interior," and the selection has been made according to law, the lands so selected become subject to state taxation, without further action by the secretary of the interior, and without being patented, and may be sold for the recovery of taxes properly assessed in the name of the grantee, subject to such liens and claims as the United States government may have, as contemplated by the Act of Congress approved July 10, 1886. *New Orleans Pac. R. Co. v. Kelly*, (1900) 52 La. Ann. 1741.

Unsurveyed lands not subject to taxation.—Where an action was brought for the recovery of delinquent taxes assessed against lands acquired by a railroad company under the Acts of Congress of July 1, 1862, and July 2, 1864, and a large quantity of the land was unsurveyed, the court held that the unsurveyed lands could not be taxed. *State v. Central Pac. R. Co.*, (1890) 21 Nev. 94.

Construction and interpretation of Act.—To render surveyed but unpatented lands upon which the costs of survey had not been paid subject to state taxation, Congress, on July 10, 1886, 24 Stat. L. 143, passed the above Act. This Act was interpreted in *Central Pac. R. Co. v. Nevada*, (1896) 162 U. S. 512. The lands involved were classified in the opinion of that case as follows: (1) Patented; (2) unsurveyed; (3) surveyed but unpatented, upon which the cost of surveying had been paid; and (4) like lands upon which the cost of survey had not been paid. Applying the statute, the court said: "The principal dispute is with regard to the fourth class. * * * In view of this statute it is difficult to see how these lands, which are the very ones provided for by the statute, can escape taxation if the state chooses to tax them." This case establishes the right of the state to tax the surveyed lands, mineral or agricultural, within the place limits of the grant. The statute of Nevada defined the

term "real estate" to include "the ownership of, or claim to, or possession of, or right of possession to any lands;" and the Supreme Court of the state decided that to constitute a possessory claim actual possession was necessary, and, on this account, distinguished in some way surveyed from unsurveyed lands. It was urged that the distinction was not justified, and that the necessity of actual possession applied alike to both kinds and exempted both kinds from taxation, and hence it was insisted there was nothing to tax unless the title was taxed, and that this could not be done. To this contention the opinion replied that how the interest of the railroad company should be defined was not a federal question, nor did inaptitude of definition by the Supreme Court of the state or in the application of the definition raise a federal question. "Taxation of the lands by the state," it was said, "rested upon some theory that the railroad had a taxable interest in them. What that interest was does not concern us so long as it appears that, so far as Congress is concerned, express authority was given to tax the lands." See also *Northern Pac. R. Co. v. Myers*, (1899) 172 U. S. 589.

Controversy as to mineral character of lands.—In *Northern Pac. R. Co. v. Myers*, (1899) 172 U. S. 589, it was held that lands within the place limits of a railroad company's grant were taxable by the state of *Montana*, where the patents were withheld and there was an undetermined controversy between the company and the interior department concerning the mineral or nonmineral character of the lands.

Possessory claim to land.—The title or interest of the United States in the public lands will not be affected where only the possessory claim to the land is assessed. Such assessment will only reach the taxpayer's interest in the land. Under section 1108 Gen. Stat. Nev., it is a good answer for a defendant when assessed for a possessory claim to land to deny such claim, and plead that whatever claim it has is exempt from taxation. The possessory claim to public land which may be taxed as something separate and distinct from the title in fee, is an actual possession, and not a constructive possession or a mere claim to the land. Mortgaging and leasing public lands do not constitute actual possession thereof. *State v. Central Pac. R. Co.*, (1892) 21 Nev. 247.

SEC. 2. [*Cost for surveying, how collected.*] That if any railroad corporation required by law to pay the costs of surveying, selecting, or conveying any lands granted to such company or for its use and benefit by act of Congress shall for thirty days neglect or refuse to pay any such costs after demand for payment thereof by the Secretary of the Interior, he shall notify the Attorney-General, who shall at once commence proceedings to collect the same. But when any sum shall be collected of such railroad company as costs of surveying, selecting, and conveying any tract of land which shall have been purchased under the provisions of section one hereof, the Secretary of the Interior shall out of such collections reimburse said purchaser, his heirs or assigns, the amount of money paid by him as the costs of such surveying, selecting, and conveying. [24 Stat. L. 143.]

SEC. 3. [*Right of forfeiture to United States not affected.*] That this act shall not affect the right of the Government to declare or enforce a forfeiture of any lands so granted; but all the rights of the United States to said lands or to any interest therein shall be and remain as if this act had not passed, except as to the lien mentioned in the first section hereof. [24 Stat. L. 143.]

SEC. 4. [*Costs of survey of Union Pacific grant, when payable.*] That section twenty-one of chapter two hundred and sixteen, approved July second, eighteen hundred and sixty-four, is hereby so amended as that the costs of surveying, selecting and conveying therein required to be paid shall become due and payable at and on the demand therefor made by the Secretary of the Interior as provided in section two of this act, and nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said act, as in the opinion of Congress, justice or the public welfare may require, or to impair or waive any right or remedy in the premises now existing in favor of the United States. This act shall be subject to alteration, amendment, or repeal. [24 Stat. L. 143.]

[SEC. 1.] [*Survey of lands granted to States — selection of lands — notice — advances for surveys.*] * * * That it shall be lawful for the governors of the States of Washington, Idaho, Montana, North Dakota, South Dakota and Wyoming to apply to the Commissioner of the General Land Office for the survey of any township or townships of public land then remaining unsurveyed in any of the several surveying districts, with a view to satisfy the public land grants made by the several Acts admitting the said States into the Union to the extent of the full quantity of land called for thereby; and upon the application of said governors the Commissioner of the General Land Office shall proceed to immediately notify the Surveyor-General of the application made by the governor of any of the said States of the application made for the withdrawal of said lands, and the Surveyor-General shall proceed to have the survey or surveys so applied for made, as in the cases of surveys of public lands; and the lands that may be found to fall within the limits of such township or townships, as ascertained by the survey, shall be reserved upon the filing of the application for survey from any adverse appropriation by settlement or otherwise except under rights that may be found to exist of prior inception, for a period to extend from such application for survey until the expiration of sixty days from the date of the filing of the township plat of survey in the proper district land office, during which period of sixty days the State may select any of such lands not embraced in any valid adverse claim, for the satisfaction of such grants, with the condition, however, that the governor of the State, within thirty days from the date of such filing of the application for survey, shall cause a notice to be published, which publication shall be continued for thirty days from the first publication, in some newspaper of general circulation in the vicinity of the lands likely to be embraced in such township or townships, giving notice to all parties interested of the fact of such application for survey and the exclusive right of selection by the State for the aforesaid period of sixty days as herein provided for; and after the expiration of such period of sixty days any lands which may remain unselected by the State, and not otherwise appropriated according to law, shall be subject to disposal under general laws as other public lands: *And provided further*, That the Commissioner of the General Land Office shall give notice immediately of the reservation of any township or townships to the local land office in which the land is situate of the withdrawal of such township or townships, for the purpose hereinbefore provided: *And provided further*, That the governors of the several States herein named are authorized to advance money from time to time for the survey of the townships withdrawn at such United States depository as may be designated by the Commissioner of the General Land Office, and the moneys so advanced shall be reimbursable. The foregoing provisions shall be applicable to Utah when admitted as a State into the Union and a governor is duly inaugurated and acting. * * * [28 Stat. L. 394.]

This is from the Sundry Civil Appropriation Act of Aug. 18, 1894, ch. 301.
Grants to states. — See div. XVI. herein.

[SEC. 1.] [*Survey of railroad land grants — continuing appropriation — reimbursement — reports.*] * * * For the survey of the public lands lying within the limits of land grants made by Congress to aid in the construction of railroads, and the selection therein of such lands as are granted therefor, to enable the Secretary of the Interior to carry out the provisions of section one

of the Act of March third, eighteen hundred and eighty-seven, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes," being chapter three hundred and seventy-six of volume twenty-four of the Statutes at Large, page five hundred and fifty-six, the sum of one hundred thousand dollars is hereby appropriated and made a continuing appropriation for the survey of lands within the limits of railroad land grants, and any money which shall be expended of such appropriation and reimbursed and paid into the Treasury is hereby reappropriated, and said sum shall remain a continuing appropriation, and so often as any part of the same shall, after being expended, be reimbursed by any railroad company as hereinafter provided, the same shall be again available for the purposes aforesaid: *Provided*, That any portion of said sum expended for surveying such lands shall be reimbursed by the respective companies or parties in interest for whose benefit the lands are granted, according to the provisions of the Act of July fifteenth, eighteen hundred and seventy, chapter two hundred and ninety-two, volume sixteen, pages three hundred and five and three hundred and six, and Act of July thirty-first, eighteen hundred and seventy-six, chapter two hundred and forty-six of volume nineteen, page one hundred and twenty-one of the Statutes at Large, requiring "that before any lands granted to any railroad company shall be conveyed to such company or any persons entitled thereto under any of the Acts incorporating or relating to said company, unless said company is excepted by law from the payment of such cost, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or persons in interest": *And provided further*, That whenever there shall have been reimbursed and paid into the Treasury of the United States, by the respective companies or parties in interest, any part of said appropriation expended for surveys within such grants, there shall be immediately available, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount so reimbursed, and the same shall be available for the survey of the public lands lying within the limits of the railroad land grants made by Congress, until all of said lands shall have been surveyed: *Provided*, That nothing herein contained shall be construed to prevent the use, within the limits of any railroad land grant made by Congress, of any part of any regular appropriation for surveying the public lands: *Provided*, That no part of the foregoing money shall be used for any land embraced in any grant to the State of Florida: *And provided further*, That the provisions of law requiring reimbursements to be made to the United States by railroad corporations claiming such grants, shall apply equally to the successors of such railroad corporations acquiring title to their lands and other property, under decree of foreclosure of any mortgage authorized by Congress. This paragraph shall be in lieu of the provision in the sundry civil appropriation Act approved August eighteenth, eighteen hundred and ninety-four, providing for the survey of such lands, and the Secretary of the Interior shall report to each regular session of Congress what has been done under the foregoing provisions.

* * * [28 Stat. L. 937.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189. It supersedes a similar provision of the Appropria-

tion Act of Aug. 18, 1894, ch. 301, 28 Stat. L. 395, mentioned in the concluding clause. Grants for railroads. — See div. XV. herein.

Sec. 2401. [When survey may be had by settlers in township.] When the settlers in any township not mineral or reserved by the Government, or persons and associations lawfully possessed of coal lands and otherwise qualified to

make entry thereof, or when the owners or grantees of public lands of the United States, under any law thereof, desire a survey made of the same under the authority of the surveyor-general and shall file an application therefor in writing, and shall deposit in a proper United States depository to the credit of the United States a sum sufficient to pay for such survey, together with the expenditures incident thereto, without cost or claim for indemnity on the United States, it shall be lawful for the surveyor-general, under such instructions as may be given him by the Commissioner of the General Land Office, and in accordance with law, to survey such township or such public lands owned by said grantees of the Government, and make return therefor to the general and proper local land office: *Provided*, That no application shall be granted unless the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or bases of township and subdivisional surveys. [R. S.]

This section was amended to read as above by the Act of Aug. 20, 1894, ch. 302, sec. 1, 28 Stat. L. 423.

The section originally read as follows:

"SEC. 2401. When the settlers in any township, not mineral or reserved by Government, desire a survey made of the same, under the authority of the surveyor-general, and file an application therefor in writing, and deposit in a proper United States depository, to the credit of the United States, a sum sufficient to pay for such survey, together with all expenses incident thereto, without

cost or claim for indemnity on the United States, it may be lawful for the surveyor-general, under such instructions as may be given him by the Commissioner of the General Land Office, and in accordance with law, to survey such township and make return thereof to the general and proper local land office, provided the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or bases of township and subdivisional surveys." Act of May 30, 1862, ch. 86, 12 Stat. L. 410.

Sec. 2402. [*Deposit for expenses of surveys deemed an appropriation, etc.*] The deposit of money in a proper United States depository, under the provision of the preceding section, shall be deemed an appropriation of the sums so deposited for the objects contemplated by that section, and the Secretary of the Treasury is authorized to cause the sums so deposited to be placed to the credit of the proper appropriations for the surveying-service; but any excesses in such sums over and above the actual cost of the surveys, comprising all expenses incident thereto, for which they were severally deposited, shall be repaid to the depositors respectively. [R. S.]

Act of July 1, 1864, Res. 60, 13 Stat. L. 414.

Sec. 2403. [*Deposits made by settlers for public surveys to go in part payment of lands.*] Where settlers or owners or grantees of public lands make deposits in accordance with the provisions of section twenty-four hundred and one, as hereby amended, certificates shall be issued for such deposits which may be used by settlers in part payment for the lands settled upon by them, the survey of which is paid for out of such deposits, or said certificates may be assigned by indorsement and may be received by the Government in payment for a public lands of the United States in the States where the surveys were made entered or to be entered under the laws thereof. [R. S.]

This section was amended to read as above by the Act of Aug. 20, 1894, ch. 302, sec. 2, 28 Stat. L. 423.

The section originally read as follows:

"SEC. 2403. Where settlers make deposits in accordance with the provisions of section twenty-four hundred and seven the amount so deposited shall go in part payment for their lands situated in the townships, the surveying of which is paid for out of such de-

posits." Act of March 3, 1871, ch. 127, Stat. L. 581.

It was amended by Act of April 27, 1876, ch. 84, 19 Stat. L. 38, by striking out the word "seven" and inserting the word "one" and providing that "all proceedings under said section two thousand four hundred and three shall have the same force and effect as though enacted as herein amended."

It was again amended by Act of Ma

3, 1879, ch. 170, 20 Stat. L. 352, by adding at the end of the section as thus amended the following:

"Or the certificates issued for such deposits may be assigned by indorsement, and be received in payment for any public lands of the

United States entered by settlers under the pre-emption and homestead laws of the United States, and not otherwise."

It was again amended as above stated to read as given in the text.

[SEC. 1.] *[Deposits for surveys in Louisiana may be used for resurveys — certificates of deposit in payment for land.]* * * * That the part of the sum hereby appropriated which may be apportioned to the surveying district of Louisiana, together with such sums as have been or may be deposited for surveys therein by actual settlers, under sections twenty-four hundred and one, twenty-four hundred and two, and twenty-four hundred and three of the Revised Statutes, may be, in whole or in part, employed in making such resurveys as may be necessary in the discretion of the Commissioner of the General Land Office. * * * That no certificate issued for a deposit of money for the survey of lands under section twenty-four hundred and three of the Revised Statutes, and the act approved March third, eighteen hundred and seventy-nine, amendatory thereof, shall be received in payment for lands except at the land office in which the lands surveyed for which the deposit was made are subject to entry, and not elsewhere; but this section shall not be held to impair, prejudice, or affect in any manner certificates issued or deposits and contracts made under the provisions of said act prior to the passage of this act. * * * [22 Stat. L. 327.]

This is from the Sundry Civil Appropriation Act of Aug. 7, 1882, ch. 433.

An Act To authorize the Commissioner of the General Land Office to cause public lands to be surveyed in certain cases.

[Act of Feb. 27, 1899, ch. 205, 30 Stat. L. 892.]

[*Deposit for surveys of grants to railroads.*] That when any railroad company claiming a grant of land under any Act of Congress, desiring to secure the survey of any unsurveyed lands within the limits of its grant, shall file an application therefor in writing with the surveyor-general of the State in which the lands sought to be surveyed are situated, and deposit in a proper United States depository to the credit of the United States a sum sufficient to pay for such survey and for the examination thereof pursuant to law and the rules and regulations of the Department of the Interior under the direction of the Commissioner of the General Land Office, it shall thereupon be the duty of the Commissioner of the General Land Office, or the Director of the Geological Survey, as the case may be, to cause said lands to be surveyed. For any deposits made by any railroad company hereunder, certificates shall be issued, which may be used by such railroad company, its successors or assigns, to the same extent as cash is now allowed in payment of entries of public lands under existing law and regulations for any public lands of the United States in the States where the surveys were made, or for any survey or office fees due the United States from such railroad company on account of surveys of lands within its grant. The Secretary of the Interior shall provide such rules and regulations as may be necessary for carrying out the foregoing provisions. [30 Stat. L. 892.]

Sec. 2404. [*Augmented rates for surveys of lands covered with forests, etc., in Oregon.*] The Commissioner of the General Land-Office may authorize, in

his discretion, public lands in Oregon, densely covered with forests or thick undergrowth, to be surveyed at augmented rates, not exceeding eighteen dollars per mile for standard parallels, fifteen dollars for townships, and twelve dollars for section lines. [R. S.]

Act of July 15, 1870, ch. 292, 16 Stat. L. 304, 305.

Sec. 2405. [*Ibid. for California and Washington.*] The Commissioner of the General Land-Office, in his discretion, may hereafter authorize public lands in California and in Washington Territory, densely covered with forests or thick undergrowth, to be surveyed at augmented rates, not exceeding eighteen dollars per linear mile for standard parallels, sixteen dollars for townships, and fourteen dollars for section lines. [R. S.]

Act of June 10, 1872, ch. 415, 17 Stat. L. 358.

Sec. 2406. [*Geological surveys, extension of public surveys, expenses of subdividing.*] There shall be no further geological survey by the Government, unless hereafter authorized by law. The public surveys shall extend over all mineral lands; and all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of claimants; but nothing in this section contained shall require the survey of waste or useless lands. [R. S.]

Act of July 21, 1852, ch. 66, 10 Stat. L. 15, 21; Act of July 9, 1870, ch. 235, 16 Stat. L. 218. See further GEOLOGICAL SURVEY, vol. 3, p. 155.

Sec. 2407. [*Surveys on rivers in certain cases.*] Whenever, in the opinion of the President, a departure from the ordinary method of surveying land on any river, lake, bayou, or water-course would promote the public interest, he may direct the surveyor-general in whose district such land is situated, and where the change is intended to be made, to cause the lands thus situated to be surveyed in tracts of two acres in width, fronting on any river, bayou, lake, or water-course, and running back the depth of forty acres; which tracts of land so surveyed shall be offered for sale entire, instead of in half-quarter sections, and in the usual manner and on the same terms in all respects as the other public lands of the United States. [R. S.]

Act of May 24, 1824, ch. 141, 4 Stat. L. 34.

Sec. 2408. [*Lines of surveys in Nevada.*] In extending the surveys of the public lands in the State of Nevada, the Secretary of the Interior may vary the lines of the subdivisions from a rectangular form, to suit the circumstances of the country. [R. S.]

Act of July 4, 1866, ch. 166, 14 Stat. L. 86.

Sec. 2409. [*Geodetic method of survey in Oregon and California.*] The Secretary of the Interior, if he deems it advisable, is authorized to continue the surveys in Oregon and California, to be made after what is known as the geodetic method, under such regulations and upon such terms as have been or may hereafter be prescribed by the Commissioner of the General Land-Office; but none other than township-lines shall be run where the land is unfit for cultivation; nor shall any deputy surveyor charge for any line except such as may be actually run and marked, or for any line not necessary to be run. [R. S.]

Act of Sept. 27, 1850, ch. 76, 9 Stat. L. 496; Act of March 3, 1853, ch. 145, 10 Stat. L. 245.

Sec. 2410. [*Rectangular mode of survey, when may be departed from.*] Whenever, in the opinion of the Secretary of the Interior, a departure from the rectangular mode of surveying and subdividing the public lands in California would promote the public interests, he may direct such change to be made in the mode of surveying and designating such lands as he deems proper, with reference to the existence of mountains, mineral deposits, and the advantages derived from timber and water privileges; but such lands shall not be surveyed into less than one hundred and sixty acres, or subdivided into less than forty acres. [R. S.]

Act of March 3, 1853, ch. 145, 10 Stat. L. 245.

Sec. 2411. [*Compensation for surveying by the day in Oregon and California.*] Whenever the public surveys, or any portion of them, in the States of Oregon and California, are so required to be made as to render it expedient to make compensation for the surveying thereof by the day instead of by the mile, it shall be lawful for the Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, to make such fair and reasonable allowance as, in his judgment, may be necessary to insure the accurate and faithful execution of the work. [R. S.]

Act of March 3, 1853, ch. 145, 10 Stat. L. 247.
See following text.

[SEC. 1.] [*Compensation for surveying by the day in certain States and Territories.*] * * * That in the States of California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, the Territories of Arizona and New Mexico, and the district of Alaska, there may be allowed, in the discretion of the Secretary of the Interior, for the survey and resurvey of lands heavily timbered, mountainous, or covered with dense undergrowth, rates not exceeding twenty-five dollars per linear mile for standard and meander lines, twenty-three dollars for township, and twenty dollars for section lines, the provisions of section twenty-four hundred and eleven, Revised Statutes of the United States, authorizing allowance for surveys in California and Oregon are hereby extended to all of the above-named States and Territories and district. * * * [32 Stat. L. 453.]

This is from the Sundry Civil Appropriation Act of June 28, 1902, ch. 1301. The same provision was contained in the Act of March 3, 1901, ch. 853, 31 Stat. L. 1159.

Sec. 2412. [*Penalty for interrupting surveys.*] Every person who in any manner, by threats or force, interrupts, hinders, or prevents the surveying of the public lands, or of any private land-claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land-Office, shall be fined not less than fifty dollars nor more than three thousand dollars, and be imprisoned not less than one nor more than three years. [R. S.]

Act of May 29, 1830, ch. 163, 4 Stat. L. 417.

Sec. 2413. [*Protection of surveyor by marshal of district.*] Whenever the President is satisfied that forcible opposition has been offered, or is likely to be offered, to any surveyor or deputy surveyor in the discharge of his duties in surveying the public lands, it may be lawful for the President to order the marshal of the State or district, by himself or deputy, to attend such surveyor

or deputy surveyor with sufficient force to protect such officer in the execution of his duty, and to remove force should any be offered. [R. S.]

Act of May 29, 1830, ch. 163, 4 Stat. L. 417.

[SEC. 1.] [*Injuring survey marks, posts, etc. — penalty — informers.*]
 * * * That hereafter it shall be unlawful for any person to destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or to cut down any witness tree or any tree blazed to mark the line of a Government survey, or to deface, change, or remove any monument or bench mark of any Government survey. That any person who shall offend against any of the provisions of this paragraph shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court shall be fined not exceeding two hundred and fifty dollars, or be imprisoned not more than one hundred days. All the fines accruing under this paragraph shall be paid into the Treasury, and the informer in each case of conviction shall be paid the sum of twenty-five dollars. * * * [29 Stat. L. 343.]

This is from the Indian Appropriation Act of June 10, 1896, ch. 398. Although this paragraph appears as a proviso under the head of "Surveying Lands in the Indian Territory," it is apparently general in terms,

and applicable to the offenses described "on any Government line of survey."

Surveys in Indian Territory.—See INDIANS, vol. 3, p. 430.

[X. BOUNTY LANDS.]

Sec. 2414. [*Military bounty-land warrants and locations assignable.*] All warrants for military bounty-lands which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are declared to be assignable by deed or instrument of writing, made and executed according to such form and pursuant to such regulations as may be prescribed by the Commissioner of the General Land-Office, so as to vest the assignee with all the rights of the original owner of the warrant or location. [R. S.]

Act of March 22, 1852, ch. 19, 10 Stat. L. 3; Act of June 3, 1858, ch. 84, 11 Stat. L. 309.

Sections 2414-2446 constitute chapter 10 of title 32 of the Revised Statutes, entitled as above.

Assignment of warrants after issuance.—The effect of this section when taken in connection with R. S. 2436 is to make certificates of bounty land assignable by any proper instrument executed after their issuance, according to forms to be prescribed by the executive department, but to render invalid assignments made before the issuance of the warrants or certificates. (1856) 7 Op. Atty.-Gen. 657.

Assignment before passage of this section.—Although before the passage of this section there was no provision for the assignment of military bounty-land warrants after issuance, the general land office regarded such warrants

as assignable, and it would seem that such was the intention of Congress at the time of the passage of the original statute. The fact that this section was subsequently enacted is not sufficient to prove that these warrants were not assignable before its passage. *Johnson v. Fluetsch*, (1903) 176 Mo. 452.

But although an assignment after the issuance of the warrant and before the issuance of the patent would have been good under R. S. 2436, such an assignment would have been void prior to the passage of that section and prior to the passage of this section (2414) under the provisions of the Act of Sept. 28, 1850, ch. 85, 9 Stat. L. 521. And the title to lands located under such an assignment would have vested in the warrantee and not in the assignee. *Johns v. Warren*, (1892) 85 Iowa 300.

The Porterfield warrants are assignable

under the provisions of this section. *McSorley v. Hill*, (1891) 2 Wash. 638.

Spurious land warrants.—A land warrant fraudulently obtained from the commissioner of pensions in the name of a person deceased without heirs or widow, or of a fictitious person, is a mere nullity, incapable of lawful assignment, and may be rejected or canceled by the commissioner of public lands. But when the commissioner has duly issued a military land warrant, valid on its face, to a person *in esse*, and capable of assigning, and such warrant has passed by lawful assignment to a *bona fide* purchaser for value without notice, the government cannot cancel such warrant on the ground that the commissioner issued it in misapprehension or on imperfect or false evidence. (1856) 7 Op. Atty-Gen. 657.

Patentee as trustee for assignee.—“A certificate of entry or location under a military land warrant vests in the holder an equitable title to the land, and gives him a right to the patent when issued. If the holder of such a certificate conveys the land or assigns the certificate before the patent issues and a patent is afterward issued to him, he becomes, upon the plainest principles of equity, a trustee for the person to whom he had previously sold or assigned.” *Gray v. Jones*, (1882) 14 Fed. Rep. 83.

In like manner one who makes an original entry on land and receives a patent after it has been located by the assignee of a military bounty land warrant, holds the title in trust for the assignee. *Johnson v. Fluetsch*, 176 Mo. 452.

Right of assignee.—The assignee of a warrant has, as against the government, no higher equities than the warrantee. Hence, if the warrant was procured on false and fraudulent papers, the government is not estopped to deny its validity, though the assignee is a purchaser for value and without notice of the fraud. *Bronson v. Kukuk*, (1874) 3 Dill. (U. S.) 490, 4 Fed. Cas. No. 1,929, *distinguishing* (1856) 7 Op. Atty-Gen. 657.

Taxation by state before issuance of patent.—Since the title to the land remains in the United States until the issuance of the patent, it is not subject to taxation by the state, and a sale for state taxes under such circumstances is void. *Bronson v. Kukuk*, (1874) 3 Dill. (U. S.) 490, 4 Fed. Cas. No. 1,929.

And where, after the location of a bounty land warrant by the assignee thereof but before the issuance of a patent, the warrant upon which the location was made was canceled by the commissioner of the land office for fraud in the assignment, but the location or entry itself was not set aside, it was held that the assignee had no such interest in the land after cancellation of the warrant as rendered it subject to taxation, and that a title based on the sale of the land for state taxes was invalid as against one who subsequently succeeded to the assignee's rights and acquired a patent title by payment in cash as a substitute for the warrant. *Durham v. Hussman*, (1893) 88 Iowa 29, *affirmed* in (1897) 165 U. S. 144.

Sec. 2415. [*Warrants located at \$1.25; excess paid in cash.*] The warrants which have been or may hereafter be issued in pursuance of law may be located according to the legal subdivisions of the public lands in one body upon any lands of the United States subject to private entry at the time of such location at the minimum price. When such warrant is located on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the locator shall pay to the United States in cash the difference between the value of such warrants at one dollar and twenty-five cents per acre and the tract of land located on. But where such tract is rated at one dollar and twenty-five cents per acre, and does not exceed the area specified in the warrant, it must be taken in full satisfaction thereof. [R. S.]

Act of March 22, 1852, ch. 19, 10 Stat. L. 3.

Sec. 2416. [*Claims for bounty lands in virtue of certain acts named, etc.*] In all cases of warrants for bounty-lands, issued by virtue of an act approved July twenty-seven, one thousand eight hundred and forty-two, and of two acts approved January twenty-seven, one thousand eight hundred and thirty-five, therein and thereby revised, and of two acts to the same intent, respectively, approved June twenty-six, eighteen hundred and forty-eight, and February eight, eighteen hundred and fifty-four, for military services in the revolutionary war, or in the war of eighteen hundred and twelve with Great Britain, which remained unsatisfied on the second day of July, eighteen hundred and sixty-four, it is lawful for the person in whose name such warrant issued, his heirs or legal representatives, to enter in quarter-sections, at the proper local land-office in any of the States or Territories, the quantity of the public

lands subject to private entry which he is entitled to under such warrant. [R. S.]

Act of July 2, 1864, ch. 226, 13 Stat. L. 378.

Sec. 2417. [*Same subject.*] All warrants for bounty-lands referred to in the preceding section may be located at any time, in conformity with the general laws in force at the time of such location. [R. S.]

Act of July 2, 1864, ch. 226, 13 Stat. L. 379.

Sec. 2418. [*Bounty lands for soldiers in certain wars.*] Each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned officers, musicians, or privates, whether of regulars, volunteers, rangers, or militia, who performed military service in any regiment, company, or detachment, in the service of the United States, in the war with Great Britain, declared on the eighteenth day of June, eighteen hundred and twelve, or in any of the Indian wars since seventeen hundred and ninety, and prior to the third of March, eighteen hundred and fifty, and each of the commissioned officers who was engaged in the military service of the United States in the war with Mexico, shall be entitled to lands as follows: Those who engaged to serve twelve months or during the war, and actually served nine months, shall receive one hundred and sixty acres, and those who engaged to serve six months, and actually served four months, shall receive eighty acres, and those who engaged to serve for any or an indefinite period, and actually served one month, shall receive forty acres; but wherever any officer or soldier was honorably discharged in consequence of disability contracted in the service, before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which he had engaged to serve. All the persons enumerated in this section who enlisted in the regular army, or were mustered in any volunteer company for a period of not less than twelve months, and who served in the war with Mexico and received an honorable discharge, or who were killed or died of wounds received or sickness incurred in the course of such service, or were discharged before the expiration of the term of service in consequence of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant for one hundred and sixty acres of land: or at option Treasury scrip for one hundred dollars bearing interest at six per cent. per annum, payable semi-annually, at the pleasure of the Government. In the event of the death of any one of the persons mentioned in this section during service, or after his discharge, and before the issuing of a certificate or warrant, the warrant or scrip shall be issued in favor of his family or relatives: first, to the widow and his children; second, his father; third, his mother; fourth, his brothers and sisters. [R. S.]

Act of Feb. 11, 1847, ch. 8, 9 Stat. L. 125, 126; Act of Sept. 28, 1850, ch. 85, 9 Stat. L. 520.

Right of soldier to demand warrant.—A soldier who has rendered the required service has a legal right to demand the issuance of a warrant for his bounty land, and the proper officers of the government are not only authorized, but bound, by law to issue the warrant. (1851) 5 Op. Atty.-Gen. 387.

Nature of certificate issued under this section.—A certificate issued under this section is not a right to demand money, but is merely a right to locate the warrant on any

quarter-section of land subject to private entry. (1881) 17 Op. Atty.-Gen. 157.

Value of land subject to location.—This section was intended to operate on the public lands which were subject to sale at the minimum price, and did not authorize locations of land warrants on lands the price of which was fixed at \$2 per acre by the Act of Aug. 3, 1846. (1848) 4 Op. Atty.-Gen. 714.

Issuance of several warrants on same claim.—Not more than one warrant can be lawfully issued on a soldier's claim for bounty land. If through mistake or fraud more than one warrant is issued on the same

claim, the officer at fault will have transcended his authority and performed an act having no legal validity. The issuance of the first warrant must be held to have executed the law and fully satisfied the soldier's claim. Hence all land warrants for bounty land, subsequent to the one first issued on the claim, are null and void. (1851) 5 Op. Atty.-Gen. 387.

Volunteer honorably discharged before expiration of enlistment.—A volunteer soldier who enlisted in the army in 1846 for the term of five years, and served until 1849, when, in consequence of the reduction of the army after the termination of the war with Mexico, he was honorably discharged against his own wishes, was held to be entitled to the bounty land provided by this section. (1849) 5 Op. Atty.-Gen. 147.

But it was held that a soldier who enlisted during the war with Mexico for twelve months, but who, without having been wounded or sick, was honorably discharged, was not entitled to bounty land under this Act, where there was a presumption from the statement of the case made to the attorney-general that the claimant voluntarily withdrew from the service before the expiration of the twelve months for which he had enlisted. (1848) 4 Op. Atty.-Gen. 718.

Volunteer discharged before performing warlike duty.—Where a volunteer was reg-

ularly mustered into service for the war with Mexico, but was honorably discharged before marching to the seat of war or performing any warlike duty, it was held that he was entitled to bounty land under this section. (1852) 5 Op. Atty.-Gen. 617.

Seamen or marines not entitled to bounty land.—The Act of Sept. 28, 1850, 9 Stat. L. 920, appears not to have been considered sufficient to describe seamen or marines, and accordingly Congress by the Act of March 3, 1855, 10 Stat. L. 701, gave a similar bounty to the officers and privates of the navy and marines. *In re Bailey*, (1872) 2 Sawy. (U. S.) 200, 2 Fed. Cas. No. 728. And see *infra*, R. S. 2425-2431.

Devise of claim before issuance of warrant.—Soldiers entitled to bounty land, but who have not received warrants therefor, have no authority to dispose of their rights to such land or scrip by will, as the statute expressly provides a method for the disposition of the claim and the issuance of the warrant in the event of the soldier's death before the warrant is issued. (1850) 5 Op. Atty.-Gen. 237.

A soldier's home is not entitled to bounty-land warrants belonging to the estates of deceased soldiers which remain unclaimed for the period of three years after their decease. (1881) 17 Op. Atty.-Gen. 157.

Sec. 2419. [*Certain classes of persons in the Mexican war, their widows, etc., entitled to forty acres.*] The persons enumerated in the preceding section received into service after the commencement of the war with Mexico, for less than twelve months, and who served such term, or were honorably discharged are entitled to receive a certificate or warrant for forty acres, or scrip for twenty-five dollars if preferred, and in the event of the death of such person during service, or after honorable discharge before the eleventh of February, eighteen hundred and forty-seven, the warrant or scrip shall issue to the wife, child, or children, if there be any, and if none, to the father, and if no father, to the mother of such soldier. [R. S.]

Act of Feb. 11, 1847, ch. 8, 9 Stat. L. 126.

Sec. 2420. [*Militia and volunteers in service since 1812.*] Where the militia, or volunteers, or State troops of any State or Territory, subsequent to the eighteenth day of June, eighteen hundred and twelve, and prior to March twenty-second, eighteen hundred and fifty-two, were called into service, the officers and soldiers thereof shall be entitled to all the benefits of section two thousand four hundred and eighteen upon proof of length of service as therein required. [R. S.]

Act of March 22, 1852, ch. 19, 10 Stat. L. 4.

Sec. 2421. [*Persons not entitled under preceding sections.*] No person shall take any benefit under the provisions of the three preceding sections, if he has received, or is entitled to receive, any military land-bounty under any act of Congress passed prior to the twenty-second March, eighteen hundred and fifty-two. [R. S.]

Act of Sept. 28, 1850, ch. 85, 9 Stat. L. 520.

Sec. 2422. [*Period of captivity added to actual service.*] The period of which any officer or soldier remained in captivity with the enemy shall be estimated and added to the period of his actual service, and the person retained in captivity shall receive land under the provisions of sections twenty-four hundred and eighteen and twenty-four hundred and twenty, in the same manner that he would be entitled in case he had entered the service for the whole term made up by the addition of the time of his captivity, and served during such term. [R. S.]

Act of Sept. 28, 1850, ch. 85, § 9 Stat. L. 520.

Sec. 2423. [*Warrant and patent to issue, when.*] Every person for whom provision is made by sections twenty-four hundred and eighteen and twenty-four hundred and twenty shall receive a warrant from the Department of the Interior for the quantity of land to which he is entitled; and, upon the return of such warrant, with evidence of the location thereof having been legally made to the General Land-Office, a patent shall be issued therefor. [R. S.]

Act of Sept. 28, 1850, ch. 85, § 9 Stat. L. 520.

Sec. 2424. [*Widows of persons entitled.*] In the event of the death of any person, for whom provision is made by sections twenty-four hundred and eighteen and twenty-four hundred and twenty, and who did not receive bounty land for his services, a like warrant shall issue in favor of his widow, who shall be entitled to one hundred and sixty acres of land in case her husband was killed in battle; nor shall a subsequent marriage impair the right of the widow to such warrant, if she be a widow at the time of making her application. [R. S.]

Act of Sept. 28, 1850, ch. 85, § 9 Stat. L. 520.

Sec. 2425. [*Additional bounty lands, etc.*] Each of the surviving persons specified in the classes enumerated in the following section, who has served a period of not less than fourteen days, in any of the wars in which the United States have been engaged since the year seventeen hundred and ninety and prior to the third day of March, eighteen hundred and fifty-five, shall be entitled to receive a warrant from the Department of the Interior, for one hundred and sixty acres of land; and, where any person so entitled has, prior to the third day of March, eighteen hundred and fifty-five, received a warrant for any number of acres less than one hundred and sixty, he shall be allowed a warrant for such quantity of land only as will make, in the whole, with what he may have received prior to that date, one hundred and sixty acres. [R. S.]

Act of March 3, 1855, ch. 207, 10 Stat. L. 701, § 702.

Service in an Indian war.—Where a brigadier-general of the United States army commanding the department of New Mexico called out volunteers to serve against the Indians, it was held that a volunteer who was not mustered in or regularly enlisted, but who served pursuant to the call upward of fourteen days, was entitled to the benefit of this section. The court said that the troops called into the military service to serve against the Indians were equally entitled with other troops to the benefit of this section and of the various similar Acts of Congress, though there may have been no formal declaration of war by Congress nor any public official

proclamation of its existence by the President of the United States, as the means to suppress the disturbance and reduce the Indians to submission constituted what was known in common parlance, as well as legal enactments, as an "Indian war." *Anderson v. Lee*, (1865) 1 Ct. Cl. 233, *reversed on appeal*; *United States v. Lee*, (1867) 6 Wall. (U. S.) 573. Compare dissenting opinion of Lord J., (1866) 2 Ct. Cl. 590.

Service subsequent to passage of section.—Military services in the prosecution of a war, subject to the Act of March 3, 1855, 10 Stat. L. 701, and prior to the Act of May 14, 1856, 11 Stat. L. 8, entitled "An Act to amend the Act of March 3, 1855, relating to the land warrant of a soldier so serving to a land warrant," were embraced within the terms of the

ployed by the latter law. It was not necessary that the soldier should have been mustered in or formally enlisted, provided he served with the armed forces of the United States subject to military orders for the

space of fourteen days. *Alire's Case*, (1865) 1 Ct. Cl. 233, *reversed* on jurisdictional grounds in (1867) 6 Wall. (U. S.) 573. *Compare* dissenting opinion of Loring, J., (1866) 2 Ct. Cl. 590.

Sec. 2426. [*Classes under last section specified.*] The classes of persons embraced as beneficiaries under the preceding section, are as follows, namely:

First. Commissioned and non-commissioned officers, musicians, and privates, whether of the regulars, volunteers, rangers, or militia, who were regularly mustered into the service of the United States.

Second. Commissioned and non-commissioned officers, seamen, ordinary seamen, flotilla-men, marines, clerks, and landsmen in the Navy.

Third. Militia, volunteers, and State troops of any State or Territory, called into military service, and regularly mustered therein, and whose services have been paid by the United States.

Fourth. Wagon-masters and teamsters who have been employed under the direction of competent authority, in time of war, in the transportation of military stores and supplies.

Fifth. Officers and soldiers of the revolutionary war, and marines, seamen, and other persons in the naval service of the United States during that war.

Sixth. Chaplains who served with the Army.

Seventh. Volunteers who served with the armed forces of the United States in any of the wars mentioned, subject to military orders, whether regularly mustered into the service of the United States or not. [*R. S.*]

Act of March 3, 1855, ch. 207, 10 Stat. L. 701; Act of May 14, 1856, ch. 26, 11 Stat. L. 8, 9.

Militia serving under authority of state.—This section includes not only militia or volunteers whose military service was performed under the general command of the

United States and in time of war, but also such as rendered military service whether in time of war or not, and whether under the immediate authority of the United States or of a state or territory, but who were paid for such service by the United States. (1855) 7 Op. Atty-Gen. 606.

Sec. 2427. [*What classes of persons entitled under section 2425, without regard to length of service.*] The following class of persons are included as beneficiaries under section twenty-four hundred and twenty-five, without regard to the length of service rendered.

First. Any of the classes of persons mentioned in section twenty-four hundred and twenty-six who have been actually engaged in any battle in any of the wars in which this country has been engaged since seventeen hundred and ninety, and prior to March third, eighteen hundred and fifty-five.

Second. Those volunteers who served at the invasion of Plattsburgh, in September, eighteen hundred and fourteen.

Third. The volunteers who served at the battle of King's Mountain, in the revolutionary war.

Fourth. The volunteers who served at the battle of Nickojack against the confederate savages of the South.

Fifth. The volunteers who served at the attack on Lewistown, in Delaware, by the British fleet, in the war of eighteen hundred and twelve. [*R. S.*]

Act of March 3, 1855, ch. 207, 10 Stat. L. 702.

Sec. 2428. [*Widows and children of persons entitled under section 2425.*] In the event of the death of any person who would be entitled to a warrant, as provided in section twenty-four hundred and twenty-five, leaving a widow, or, if no widow, a minor child, such widow or such minor child shall receive a

warrant for the same quantity of land that the decedent would be entitled to receive, if living on the third day of March, eighteen hundred and fifty-five. [R. S.]

Act of March 3, 1855, ch. 207, 10 Stat. L. 702.

Minor's right vests on filing of claim.—The Act does not vest the right to the warrant for bounty land in the minor child before his or her claim is filed. (1860) 9 Op. Atty.-Gen. 427.

Date at which minority must have existed.—The date of the application is the one at

which the person claiming as a minor must be shown to have been under full age; and where this is established the right of the claimant will not be defeated by attaining his or her majority before the case is finally disposed of. (1860) 9 Op. Atty.-Gen. 427.

Minor children born after the date of the Act are included within its provisions. (1860) 9 Op. Atty.-Gen. 427.

Sec. 2429. [*Subsequent marriage of widow.*] A subsequent marriage shall not impair the right of any widow, under the preceding section, if she be a widow at the time of her application. [R. S.]

Act of March 3, 1855, ch. 207, 10 Stat. L. 702.

Sec. 2430. [*Minors under section 2428.*] Persons within the age of twenty-one years on the third day of March, eighteen hundred and fifty-five, shall be considered minors within the intent of section twenty-four hundred and twenty-eight. [R. S.]

Act of March 3, 1855, ch. 207, 10 Stat. L. 702.

Sec. 2431. [*Proof of service.*] Where no record evidence of the service for which a warrant is claimed exists, parol evidence may be admitted to prove the service performed, under such regulations as the Commissioner of Pensions may prescribe. [R. S.]

Act of March 3, 1855, ch. 207, 10 Stat. L. 702; Act of May 14, 1856, ch. 26, 11 Stat. L. 8.

An Act To repeal in part and to limit section thirty-four hundred and eighty of the Revised Statutes of the United States.

[*Act of March 11, 1898, ch. 57, 30 Stat. L. 274.*]

[*Applicants need not prove loyalty during rebellion.*] That section thirty-four hundred and eighty of the Revised Statutes of the United States be, and the same is hereby, so far, and no further, modified and repealed as to dispense with proof of loyalty during the late war of the rebellion as a prerequisite in any application for bounty land where the proof otherwise shows that the applicant is entitled thereto. [30 Stat. L. 274.]

R. S. sec. 3480 prohibits the payment of any claim or demand against the United States which accrued or existed prior to the 13th day of April 1861, in favor of any person

who was not loyal to the government of the United States during the Rebellion. See CLAIMS, vol. 2, p. 14.

Sec. 2432. [*Former evidence of right to bounty land to be received in certain cases.*] Where certificate or a warrant for bounty-land for any less quantity than one hundred and sixty acres has been issued to any officer or soldier, or to the widow or minor child of any officer or soldier, the evidence upon which such certificate or warrant was issued shall be received to establish the service of such officer or soldier in the application of himself, or of his widow or minor child, for a warrant for so much land as may be required to make up the full sum of one hundred and sixty acres, to which he may be entitled under the preceding section, on proof of the identity of such officer or

soldier, or, in case of his death, of the marriage and identity of his widow, or, in case of her death, of the identity of his minor child. But if, upon a review of such evidence, the Commissioner of Pensions is not satisfied that the former warrant was properly granted, he may require additional evidence, as well of the term as of the fact of service. [R. S.]

Act of May 14, 1856, ch. 26, 11 Stat. L. 8.

Sec. 2433. [*Allowance of time of service for distance from home to place of muster or discharge.*] When any company, battalion, or regiment, in an organized form, marched more than twenty miles to the place where they were mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion, or regiment was organized, in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion, or regiment, there shall be allowed one day for every twenty miles from the place where the company, battalion, or regiment was organized to the place where the same was mustered into the service of the United States, and one day for every twenty miles from the place where such company, battalion, or regiment was discharged, to the place where it was organized, and from whence it marched to enter the service, provided that such march was in obedience to the command or direction of the President, or some general officer of the United States, commanding an army or department, or the chief executive officer of the State or Territory by which such company, battalion, or regiment was called into service. [R. S.]

Act of May 14, 1856, ch. 26, 11 Stat. L. 9; Act of March 22, 1852, ch. 19, 10 Stat. L. 4.

Sec. 2434. [*Indians included.*] The provisions of all the bounty-land laws shall be extended to Indians, in the same manner and to the same extent as to white persons. [R. S.]

Act of March 3, 1855, ch. 207, 10 Stat. L. 702.

Sec. 2435. [*Former evidence of right to a pension to be received in certain cases on application for bounty land.*] Where a pension has been granted to any officer or soldier, the evidence upon which such pension was granted shall be received to establish the service of such officer or soldier in his application for bounty-land; and upon proof of his identity as such pensioner, a warrant may be issued to him for the quantity of land to which he is entitled; and in case of the death of such pensioned officer or soldier, his widow shall be entitled to a warrant for the same quantity of land to which her husband would have been entitled, if living, upon proof that she is such widow; and in case of the death of such officer or soldier, leaving a minor child and no widow, or where the widow may have deceased before the issuing of any warrant, such minor child shall be entitled to a warrant for the same quantity of land as the father would have been entitled to receive if living, upon proof of the decease of father and mother. But if, upon a review of such evidence, the Commissioner of Pensions is not satisfied that the pension was properly granted, he may require additional evidence, as well of the term as of the fact of service. [R. S.]

Act of May 14, 1856, ch. 26, 11 Stat. L. 8.

Sec. 2436. [*Sales, mortgages, letters of attorney, etc., made before issue of warrant to be void.*] All sales, mortgages, letters of attorney, or other instruments of writing, going to affect the title or claim to any warrant issued,

or to be issued, or any land granted, or to be granted, under the preceding provisions of this chapter, made or executed prior to the issue of such warrant, shall be null and void to all intents and purposes whatsoever; nor shall such warrant, or the land obtained thereby, be in anywise affected by, or charged with, or subject to, the payment of any debt or claim incurred by any officer or soldier, prior to the issuing of the patent. [R. S.]

Act of Sept. 28, 1850, ch. 85, § 9 Stat. L. 521.

Traffic in soldiers' claims illegal.—Where a partnership was engaged in the business of buying up soldiers' claims before the issuance of scrip or land warrants, it was held that the traffic was illegal under the provisions of the ninth section of the Act of Feb. 11, 1847,

the main object of which was to protect the soldier against improvident contracts. *Brooks v. Martin*, (1863) 2 Wall. (U. S.) 70.

This section prohibits the devise of a soldier's bounty claim before the issuance of the warrant. (1850) 5 Op. Atty.-Gen. 237.

Sec. 2437. [*Warrants to be located free of expense by Commissioner of Land-Office, etc.*] It shall be the duty of the Commissioner of the General Land-Office, under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located, free of expense, any warrant which the holder may transmit to the General Land-Office for that purpose, in such State or land-district as the holder or warrantee may designate, and upon good farming-land, so far as the same can be ascertained from the maps, plats, and field-notes of the surveyor, or from any other information in the possession of the local office, and, upon the location being made, the Secretary shall cause a patent to be transmitted to such warrantee or holder. [R. S.]

Act of Sept. 28, 1850, ch. 85, § 9 Stat. L. 521.

Sec. 2438. [*Deserters not entitled to bounty land.*] No person who has been in the military service of the United States shall, in any case, receive a bounty-land warrant if it appears by the muster-rolls of his regiment or corps that he deserted or was dishonorably discharged from service. [R. S.]

Act of Sept. 28, 1850, ch. 85, § 9 Stat. L. 520;
Act of March 3, 1855, ch. 207, § 10 Stat. L. 701.

The widow of a person registered as a deserter on the rolls of the war department is

not entitled to bounty lands until the charge of desertion is disproved. *U. S. v. Snow*, (1877) 2 Flipp. (U. S.) 1, 27 Fed. Cas. No. 16,350.

Sec. 2439. [*Lost warrants, provisions for.*] When a soldier of the Regular Army, who has obtained a military land-warrant, loses the same, or such warrant is destroyed by accident, he shall, upon proof thereof to the satisfaction of the Secretary of the Interior, be entitled to a patent in like manner as if the warrant was produced. [R. S.]

Act of April 27, 1816, ch. 127, § 3 Stat. L. 317.

Sec. 2440. [*Discharges, omissions, and loss of, provided for.*] In all cases of discharge from the military service of the United States of any soldier of the Regular Army, when it appears to the satisfaction of the Secretary of War that a certificate of faithful services has been omitted by the neglect of the discharging officer, by misconstruction of the law, or by any other neglect or casualty, such omission shall not prevent the issuing of the warrant and patent as in other cases. And when it is proved that any soldier of the Regular Army has lost his discharge and certificate of faithful service, the Secretary of War shall cause such papers to be furnished such soldier as will entitle him to his land-warrant and patent, provided such measure is justified by the time of his enlistment, the period of service, and the report of some officer of the corps to which he was attached. [R. S.]

Act of April 27, 1816, ch. 127, § 3 Stat. L. 317.

Sec. 2441. [*New warrant issued in lieu of lost warrant.*] Whenever it appears that any certificate or warrant, issued in pursuance of any law granting bounty-land, has been lost or destroyed, whether the same has been sold and assigned by the warrantee or not, the Secretary of the Interior is required to cause a new certificate or warrant of like tenor to be issued in lieu thereof; which new certificate or warrant may be assigned, located, and patented in like manner as other certificates or warrants for bounty-land are now authorized by law to be assigned, located, and patented; and in all cases where warrants have been, or may be, re-issued, the original warrant, in whosever [*sic*] hands it may be, shall be deemed and held to be null and void, and the assignment thereof, if any there be, fraudulent; and no patent shall ever issue for any land located therewith, unless such presumption of fraud in the assignment be removed by due proof that the same was executed by the warrantee in good faith and for a valuable consideration. [R. S.]

Act of June 23, 1860, ch. 203, 12 Stat. L. 90.

Issuance of duplicate warrant renders original void.—Where a duplicate warrant is issued after the loss of the original, a patent issued to the purchaser of such duplicate warrant is valid as against one claiming under the original warrant, in the absence of due proof that he received the original by an

assignment from the warrantee executed in good faith and for a valuable consideration, as the making of such proof is essential to prevent the operation of this section which renders the original void and raises the presumption of fraud in the assignment. *Boyd v. Mammoth Spring Imp., etc., Co.*, (1896) 137 Mo. 482.

Sec. 2442. [*Regulations by Secretary of Interior.*] The Secretary of the Interior is required to prescribe such regulations for carrying the preceding section into effect as he may deem necessary and proper in order to protect the Government against imposition and fraud by persons claiming the benefit thereof; and all laws and parts of laws for the punishment of frauds against the United States are made applicable to frauds under that section. [R. S.]

Act of June 23, 1860, ch. 203, 12 Stat. L. 91.

Sec. 2443. [*Mode of issuing patents to the heirs of persons entitled to bounty lands.*] In all cases where an officer or soldier of the revolutionary war, or a soldier of the war of eighteen hundred and twelve, was entitled to bounty-land, has died before obtaining a patent for the land, and where application is made by a part only of the heirs of such deceased officer or soldier for such bounty-land, it shall be the duty of the Secretary of the Interior to issue the patent in the name of the heirs of such deceased officer or soldier, without specifying each; and the patent so issued in the name of the heirs, generally, shall inure to the benefit of the whole, in such portions as they are severally entitled to by the laws of descent in the State or Territory where the officer or soldier belonged at the time of his death. [R. S.]

Act of March 3, 1843, Res. 7, 5 Stat. L. 650.

Sec. 2444. [*Death of claimant after establishing right and before issuing of warrant.*] When proof has been or hereafter is filed in the Pension-Office, during the life-time of a claimant, establishing, to the satisfaction of that office, his right to a warrant for military services, and such warrant has not been, or may not be, issued until after the death of the claimant, and all such warrants as have been heretofore issued subsequent to the death of the claimant, the title to such warrants shall vest in his widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant; and all military bounty-land warrants issued pursuant to law shall be treated as personal chattels, and

may be conveyed by assignment of such widow, heirs, or legatees, or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only. [R. S.]

Act of June 3, 1858, ch. 84, 11 Stat. L. 308.

Respective rights of widow, heirs, and legatees. — A land warrant issued after the death of a claimant who left a widow and children inures to the widow's benefit alone. Where the deceased claimant was a widow

with two sets of children, the warrant inures to the benefit of her heirs or legatees. Heirs are those who are so declared by the law of the claimant's domicile. (1858) 9 Op. Atty.-Gen. 243.

Sec. 2445. [*When proofs may be filed by legal representatives.*] The legal representatives of a deceased claimant for a bounty-land warrant, whose claim was filed prior to his death, may file the proofs necessary to perfect such claim. [R. S.]

Act of March 3, 1869, ch. 138, 15 Stat. L. 336.

Sec. 2446. [*Relocation of military bounty-land warrants in cases of error.*] Where an actual settler on the public lands has sought, or hereafter attempts, to locate the land settled on and improved by him, with a military bounty-land warrant, and where, from any cause, an error has occurred in making such location, he is authorized to relinquish the land so erroneously located, and to locate such warrant upon the land so settled upon and improved by him, if the same then be vacant, and if not, upon any other vacant land, on making proof of those facts to the satisfaction of the land-officers, according to such rules and regulations as may be prescribed by the Commissioner of the General Land-Office, and subject to his final adjudication. [R. S.]

Act of March 3, 1853, ch. 147, 10 Stat. L. 256.

An Act To provide for the location and satisfaction of outstanding military bounty land warrants and certificates of location under section three of the Act approved June second, eighteen hundred and fifty-eight.

[Act of Dec. 13, 1894, ch. 3, 28 Stat. L. 594.]

[*Bounty warrants and indemnity certificates receivable for entries.*] That in addition to the benefits now given thereto by law, all unsatisfied military bounty land warrants under any act of Congress, and unsatisfied indemnity certificates of location under the Act of Congress approved June second, eighteen hundred and fifty-eight, whether heretofore or hereafter issued, shall be receivable at the rate of one dollar and twenty-five cents per acre in payment or part payment for any lands entered under the desert land law of March third, eighteen hundred and eighty-seven, entitled "An Act to provide for the sale of desert lands in certain States and Territories," and the amendments thereto, the timber-culture law of March third, eighteen hundred and seventy-three, entitled "An Act to encourage the growth of timber on the Western prairies," and the amendments thereto; the timber and stone law of June third, eighteen hundred and seventy-eight, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nebraska, and Washington Territory," and the amendments thereto, or for lands which may be sold at public auction, except such lands as shall have been purchased from any Indian tribe within ten years last past. [28 Stat. L. 594.]

The Act herein referred to as March 3, 1887, should be March 3, 1877.

An act to construe and define "An act to cede to the State of Ohio the unsold lands in the Virginia military district in said State," approved February eighteenth, eighteen hundred and seventy-one, and for other purposes.

[Act of May 27, 1880, ch. 105, 21 Stat. L. 142.]

[SEC. 1.] [*Virginia military district lands ceded to Ohio not to include appropriated lands.*] That the act ceding to the State of Ohio the lands remaining "unsurveyed and unsold" in the Virginia military district, in the State of Ohio, had no reference to lands which were included in any survey or entry within said district founded upon military warrant or warrants upon Continental establishment; and the true intent and meaning of said act was to cede to the State of Ohio only such lands as were unappropriated, and not included in any survey or entry within said district, which survey or entry was founded upon military warrant or warrants upon Continental establishment. [21 Stat. L. 142.]

The purpose and effect of this Act, and of the Act of Aug. 7, 1882, ch. 44, 22 Stat. L. 348, were not to create new rights but to preserve those already existing at the time

of the passage of the Act of cession.^{*} Board of Trustees v. Cuppett, (1895) 52 Ohio St. 567.

SEC. 2. [*Surveys returned to land office by March 3, 1857, declared valid.*] That all legal surveys returned to the land office on or before March third, eighteen hundred and fifty-seven, on entries made on or before January first, eighteen hundred and fifty-two, and founded on unsatisfied Virginia military Continental warrants, are hereby declared valid. [21 Stat. L. 143.]

This section refers to the general land office and not to the office of the principal surveyor of the Virginia military district. Fussell v. Gregg, (1885) 113 U. S. 550.

SEC. 3. [*Officers and soldiers of Virginia line to have three years to perfect land title.*] That the officers and soldiers of the Virginia line on Continental establishment, their heirs or assigns, entitled to bounty-lands, which have, on or before January first, eighteen hundred and fifty-two, been entered within the tract reserved by Virginia, between the Little Miami and Sciota Rivers, for satisfying the legal bounties to her officers and soldiers upon Continental establishment, shall be allowed three years from and after the passage of this act to make and return their surveys for record to the office of the principal surveyor of said district, and may file their plats and certificates, warrants, or certified copies of warrants, at the General Land Office, and receive patents for the same. [21 Stat. L. 143.]

Three years' additional time is allowed by this section for the return of the surveys of the land which had been entered but not sur-

veyed before Jan. 1, 1852. Fussell v. Gregg, (1885) 113 U. S. 550.

SEC. 4. [*Grant to Ohio Agricultural, etc., College not interfered with.*] This act shall not in any way affect or interfere with the title to any lands sold for a valuable consideration by the Ohio Agricultural and Mechanical College, grantee, under the act of February eighteenth, eighteen hundred and seventy-one. [21 Stat. L. 143.]

The effect of this section is to confirm the title to land sold for a valuable consideration by the Ohio Agricultural and Mechanical Col-

lege under the Act of Feb. 18, 1871. Coan v. Flagg, (1887) 123 U. S. 117.

An act in relation to land-patents in the Virginia military district of Ohio.

[Act of Aug. 7, 1882, ch. 444, 22 Stat. L. 348.]

[SEC. 1.] [*Possession of lands in Virginia military district of Ohio for twenty years under color of title.*] That any person in the actual open possession of any tract of land in the Virginia military district of the State of Ohio, under claim and color of title made in good faith based upon or deducible from entry of any tract of land within said district founded upon military warrant upon Continental establishment, and a record of which entry was duly made in the office of the principal surveyor of the Virginia military district, either before or since its removal to Chillicothe, Ohio, prior to January first, eighteen hundred and fifty-two, such possession having continued for twenty years last past, under a claim of title on the part of said party either as entryman, or of his or her grantors, or of parties by or under whom such party claims by purchase or inheritance, and they by title based upon or deducible from such entry by tax-sale or otherwise, shall be deemed and held to be the legal owner of such land so included in said entry, to the extent and according to the purport of said entry or of his or her paper titles based thereon or deducible therefrom. [22 Stat. L. 348.]

SEC. 2. [*Conflicting law repealed.*] That so much of the act approved February eighteenth, eighteen hundred and seventy-one, entitled "An act to cede to the State of Ohio the unsold lands in the Virginia military district in said State," and of an act approved May twenty-seventh, eighteen hundred and eighty, construing said act of February eighteenth, eighteen hundred and seventy-one, as conflicts with this act, be, and the same is hereby, repealed. [Stat. L. 348.]

[XI. DESERT LANDS.]

An act to provide for the sale of desert lands in certain States and Territories.

[Act of March 3, 1877, ch. 107, 19 Stat. L. 377.]

[SEC. 1.] [*Reclamation and purchase of desert lands — use of water.*] That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of twenty five cents per acre — to file a declaration under oath with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same within the period of three years thereafter, *Provided however* that the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation: and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation: and all surplus water over and above such actual appropriation and use together with the water of all, lakes, rivers and other sources of water supplied upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three

years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him. *Provided*, that no person shall be permitted to enter more than one tract of land and not to exceed six hundred and forty acres which shall be in compact form. [19 Stat. L. 377.]

Entry severs lands from public domain.—An entry under this section reserves the land entered from entry under other laws and gives the right of possession for three years to the proposed purchaser. *Sallee v. Corder*, (1885) 67 Cal. 174.

Entry by corporation.—The language of this section clearly excludes an association or corporation from making a desert land entry, as by its terms it is limited to citizens of the United States or persons of requisite age who may be entitled to become citizens. This construction finds confirmation in the further provision that "no person shall be permitted to enter more than one tract," etc. Thus where an entry of two tracts was made by a corporation at its expense in the names of two individuals, and after the digging of the ditches such individuals were taken to view the land for the purpose of enabling them to make the final proof required by the statute, and after the issuance of the patents the patentees conveyed the lands by quitclaim deeds to the corporation for a nominal consideration, it was held that the entries were fraudulent, and that the government was entitled to have the patents canceled. *Salina Stock Co. v. U. S.*, (C. C. A. 1898) 85 Fed. Rep. 339.

But there is nothing in the statute denouncing a mere intention on the part of the locator to transfer his or her title, when perfected, for the benefit of even a corporation, when the locator pays the purchase money and complies with the requirements of the statute respecting irrigation. In such case, if the patent is issued to him, he may transfer the land to whom he pleases. *U. S. v. Mackintosh*, (C. C. A. 1898) 85 Fed. Rep. 333.

Entry of land along line of railroad.—The alternate reserved sections of land along the line of a railroad to which alternate sections have been granted by Congress may be entered under the terms of this Act on payment of the double price of two dollars and fifty cents per acre fixed by Congress. *Seemle*, the initial payment required is fifty cents per acre, instead of the twenty-five cents required when the entry is made on land at the minimum price of one dollar and twenty-five cents per acre. *U. S. v. Ingram*, (1899) 172 U. S. 327.

Neither the Act of March 3, 1877, ch. 107, 19 Stat. L. 377, nor the Act of March 3, 1891, ch. 561, modify U. S. R. S. 2357, so as to permit desert-land entry of alternate reserved sections at a price less than two dollars and fifty cents per acre. Hence, a desert-land entryman who was required to pay such price is not entitled to recover from the United States the difference between one dollar and

twenty-five cents and two dollars and fifty cents per acre. *U. S. v. Healey*, (1895) 160 U. S. 136, *reversing* (1894) 29 Ct. Cl. 115.

Appropriation of water need not be directly by owner.—"We perceive no merit in the contention that the proviso in the Desert Land Act of March 3, 1877, declaring that surplus water on the public domain shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes, subject to existing rights, is an expression of the will of Congress that all public waters within its control, or the control of a legislative body of its creation, must be directly appropriated by the owners of land upon which a beneficial use of water is to be made, and that in consequence a territorial legislature cannot lawfully empower a corporation, such as the appellee, to become an intermediary for furnishing water to irrigate the lands of third parties." *Gutierrez v. Albuquerque Land, etc., Co.*, (1903) 188 U. S. 555.

Effect on navigable streams and riparian rights.—By this Act Congress recognized and assented to the appropriation of water in contravention of the common-law right of lower riparian proprietors to insist on the continuous flow of the stream. But Congress did not intend to release its control over the navigable streams of the country, and to grant those reclaiming arid lands the right to appropriate the waters of the tributary streams which unite into a navigable watercourse, and thereby destroy the navigability of such watercourse in derogation of the interests of all the people of the United States. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 690. And see *Farm Invest. Co. v. Carpenter*, (1900) 9 Wyo. 110, 123.

Sufficiency of reclamation.—"It was the manifest purpose of Congress to hold out to the citizens of the United States an inducement to reclaim the waste and desert lands of the public domain, and thus render them subservient to the uses of husbandry by process of irrigation. This was to be accomplished by such a system of ditches as would carry to the subdivisions of the land capable of being reached by the surface flow, a supply of water such as, when let out of the ditches by draw gates or smaller ditches, might spread over the accessible parts, and stimulate vegetable life. If the main ditches were thus constructed, with the acquired adequate supply of water to irrigate the lands for the purpose of cultivation in the ordinary method of carrying it out over the surface of the ground, we think the reclamation contemplated by the statute was accomplished, without showing that this appropriation was followed by actual use and culti-

vation. This seems to be in accord with recent rulings of the land-office department." U. S. v. Mackintosh, (C. C. A. 1898) 85 Fed. Rep. 333.

Assignment of entry.—The making of a desert-land entry gives the entryman no right which he can sell or transfer; and a conveyance from the entryman before the perfection of his title passes no interest as against the government, which may subsequently cancel the entry. *Williams v. U. S.*, (1891) 138 U. S. 514.

Agreement to convey after vesting of title.—There is no ruling of the land department that one who has entered desert lands in good faith may not make an agreement to convey the land after title shall vest in him. On the contrary, the land department has affirmatively recognized such agreements as valid and as not affecting the rights of the entryman to obtain title. Such an agreement is not an assignment of the entry. *Arnold v. Christy*, (1893) 4 Ariz. 19.

Effect of final payment on entryman's rights.—Final payment made by an applicant for a land warrant at the proper time and place and to the proper officer, and in the expectation of receiving therefor his final certificate of entry, is conclusive evidence that the applicant did not intend to abandon his entry. After making such payment the applicant is entitled to receive a warrant for the land or to be paid back his money. The money so paid is in the nature of a pledge that the applicant will complete his part of the transaction when the government is ready to do its part, and the statute of limitations does not begin to run against an action to recover the money until the final refusal of the secretary of the interior to refund it. *Slocum v. U. S.*, (1900) 35 Ct. Cl. 485.

Money paid under mutual mistake of fact.—Where both parties suppose that an entry in the land office covers the land which the claimant has improved, and in that belief the purchase money is paid and the certificate issued, and the government subsequently cancels the entry upon discovery that the mistake of a numeral transfers the entry to an adjoining section of land, the government is bound in equity and good conscience to refund the purchase money; and an action for money had and received will lie for its refusal. Money deposited in the land office for the purpose of purchasing land is held in trust for that use, and a transaction may remain open until finally acted on by the secretary of the interior; and the statute of limitations does not begin to run until the final action of the department. *Nelson v. U. S.*, (1900) 35 Ct. Cl. 427.

Forfeiture of sum paid for entry.—Where under the terms of this Act a person entered part of an alternate reserved section on the line of a railroad at \$2.50 per acre, and

made the preliminary payment thereof fifty cents per acre, and thereafter he failed to reclaim the land by conducting water thereon as required by the statute, and voluntarily abandoned his entry, which was canceled, it was held that he had no cause of action against the United States for the sum which he paid to initiate the entry. *U. S. v. Ingalls*, (1899) 172 U. S. 327.

The provisions of the Act in the text substituted the provisions of the Act of March 3, 1875, ch. 160, 18 Stat. L. 497, "An act to provide for the sale of desert lands in Lassen County, California," as follows:

"[SEC. 1.] That it shall be lawful for any citizen of the United States, or any person of requisite age who may be entitled to become a citizen, and who has filed his declaration of intention to become such, to file a declaration with the register and the recorder of the proper land district for the county of Lassen, California, in which any desert land is situated, that he intends to reclaim a certain section of desert land situated in said county, exceeding one section, by conducting water upon the same, so as to reclaim all of said land within the period of two years thereafter; and said declaration shall be under oath and shall describe particularly said section of land, if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey; which said declaration shall be supported by the affidavit of at least two credible witnesses, establishing to the satisfaction of the register or recorder the fact that said lands are of the character described in this act. And at any time within the period of two years after the filing of said declaration, and upon making satisfactory proof of the reclamation of said tract of land in the manner aforesaid, before the register and the receiver of said land office, the person shall be entitled to enter or locate said reclaimed section, or any part thereof, in the same manner as in cases where public lands of the United States are subject to entry at a price not exceeding one dollar and twenty-five cents per acre, and shall receive a patent therefor.

"SEC. 2. That all lands within said county of Lassen, exclusive of timber lands and mineral lands, which do not produce grain or which will not, without such reclamation, produce some agricultural crop, shall be deemed desert lands within the meaning of this act."

Lands in military reservation.—See Act of May 19, 1900, ch. 484, *infra*, div. XIV.

Validation of entries.—See Act of August 1894, ch. 211, *supra*, p. 306.

Affidavits, before whom made. See section 2294, *supra*, p. 304.

Confirmation of entries.—See Act of March 3, 1891, ch. 561, sec. 7, and January 1901, ch. 12, *infra*, div. XIX.

SEC. 2. [*Desert lands defined.*] That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which

shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated — [19 Stat. L. 377.]

Determination of desert character.— The occasion on which the desert character of the land is to be ascertained is at the time of filing the declaration. This is a fact to be determined by the register of the land office

upon affidavits or other proper evidence; and his determination is final and conclusive on the courts in the absence of a direct impeachment for fraud. *U. S. v. Mackintosh*, (C. C. A. 1898) 85 Fed. Rep. 333.

SEC. 3. [*States to which applicable — determination of desert lands.*] That this act shall only apply to and take effect in the States of California, Oregon and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming Arizona, New Mexico and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the Commissioner of the General Land Office. [19 Stat. L. 377.]

Colorado included, see section 8, *infra*.

SEC. 4. [*Plan of irrigation to be filed — association of entrymen.*] That at the time of filing the declaration hereinbefore required the party shall also file a map of said land, which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections, or fractional parts of sections, of desert lands, may associate together in the construction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements. [23 Stat. L. 1096.]

Sections 4-8 of this Act were added by the Act of March 3, 1891, ch. 561, sec. 2, 26 Stat. L. 1096-1097, "An act to repeal timber-culture laws, and for other purposes."

SEC. 5. [*Expenditure and cultivation required.*] That no land shall be patented to any person under this act unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least three dollars per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid the party so entering shall expend not less than one dollar per acre for the purposes aforesaid: and he shall in like manner expend the sum of one dollar per acre during the second and also during the third year thereafter, until the full sum of three dollars per acre is so expended. Said party shall file during each year with the register proof, by the affidavits of two or more credible witnesses, that the full sum of one dollar per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid the lands shall revert to the United States, and the twenty-five cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of three dollars per acre: *Provided*, That proof be further required of the cultivation of one-eighth of the land. [26 Stat. L. 1096.]

See note to section 4, *supra*.

SEC. 6. [*Existing claims, how perfected.*] That this act shall not affect valid rights heretofore accrued under said act of March third, eighteen hundred and seventy-seven, but all bona-fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed; or said claims, at the option of the claimant, may be perfected and patented under the provisions of said act, as amended by this act, so far as applicable; and all acts and parts of acts in conflict with this act are hereby repealed. [26 Stat. L. 1097.]

See note to section 4, *supra*.

SEC. 7. [*Issue of patents upon proof and payment — limit of individual holding — additional proofs.*] That at any time after filing the declaration and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; But no person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands but this section shall not apply to entries made or initiated prior to the approval of this act. *Provided, however,* That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding act shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands, and money paid therefor, shall be forfeited to the United States. [26 Stat. L. 1097.]

See note to section 4, *supra*.

Period extended. — See Act of Aug. 4, 1894, ch. 208, given below.

SEC. 8. [*Act applicable to Colorado — resident citizens only may enter desert land.*] That the provisions of the act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado as well as the States named in the original act; and no person shall be entitled to make entry of desert land except he be a resident citizen of the State or Territory in which the land sought to be entered is located. [26 Stat. L. 1097.]

See note to section 4, *supra*.

An act for the relief of persons who have filed declarations of intention to enter desert land.

[Act of Aug. 4, 1894, ch. 208, 28 Stat. L. 226.]

[*Time extended for final proof of entries.*] That in all cases where declarations of intention to enter desert lands have been filed, and the four years' limit within which final proof may be made had not expired prior to January first, eighteen hundred and ninety-four, the time within which such proof may be made in each such case is hereby extended to five years from the date of filing the declaration; and the requirement that the persons filing such declarations shall expend the full sum of one dollar per acre during each year toward the reclamation of the land is hereby suspended for the year eighteen hundred and

ninety-four, and such annual expenditure for that year, and the proof thereof, is hereby dispensed with: *Provided*, That within the period of five years from filing the declaration satisfactory proof be made to the register and receiver of the reclamation and cultivation of such land to the extent and cost and in the manner provided by existing law, except as to said year eighteen hundred and ninety-four, and upon the payment to the receiver of the additional sum of one dollar per acre, as provided in existing law, a patent shall issue as therein provided. [28 Stat. L. 226.]

SEC. 4. [*Grant to States irrigating desert lands.*] That to aid the public land States in the reclamation of the desert lands therein, and the settlement, cultivation and sale thereof in small tracts to actual settlers, the Secretary of the Interior with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the State to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the Act entitled "An Act to provide for the sale of desert land in certain States and Territories," approved March third, eighteen hundred and seventy-seven, and the Act amendatory thereof, approved March third, eighteen hundred and ninety-one, binding the United States to donate, grant and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State, as the State may cause to be irrigated, reclaimed occupied, and not less than twenty acres of each one hundred and sixty-acre tract cultivated by actual settlers, within ten years next after the passage of this Act, as thoroughly as is required of citizens who may enter under the said desert land law. [28 Stat. L. 422.]

[*Plan of irrigation to be filed — contracts for reclaiming and settlement.*] Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement. [28 Stat. L. 422.]

[*Patents for reclaimed lands — limit to one person — surplus from sale.*] As fast as any State may furnish satisfactory proof according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: *Provided*, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived

by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. * * * [28 Stat. L. 422.]

This is from the Sundry Civil Appropriation Act of Aug. 18, 1894, ch. 301.

Amendments, see following sections.

For construction of state statutes accept-

ing the benefits of this statute, see State v. Wright, (1896) 17 Mont. 565; State v. M. shall, (1898) 20 Mont. 510; Howlett v. Cham, (1897) 17 Wash. 626.

[SEC. 1.] [*Lien for expenses of reclaiming lands—patents to issue when.*] * * * That under any law heretofore or hereafter enacted by any State, providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section four of an Act entitled "An Act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the State to which such lands are granted and by any other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such State without regard to settlement or cultivation. *Provided*, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for an amount of any such lien or liability, in whole or in part. * * * [29 Stat. 434.]

This is from the Sundry Civil Appropriation Act of June 11, 1896, ch. 420.

SEC. 3. [*Time limit for reclamation by States—extension restoration to public domain.*] That section four of the Act of August eighteenth, eighteen hundred and ninety-four, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," is hereby amended so that the ten years' period within which any State shall cause the lands applied for under said Act to be irrigated and reclaimed, as provided in said section as amended by the Act of June eleventh, eighteen hundred and ninety-six, shall begin to run from the date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if the State fails within said ten years to cause the whole or any part of the lands segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain. * * * [31 Stat. L. 1188.]

This is from the Sundry Civil Appropriation Act of March 3, 1901, ch. 853.

[XII. SWAMP AND OVERFLOWED LANDS.]

Sec. 2479. [*Grant of swamp and overflowed lands to certain States to aid in construction of levees, etc.*] To enable the several States (but not including the States of Kansas, Nebraska, and Nevada) to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein — the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the twenty-eighth day of September, A. D. eighteen hundred and fifty, are granted and belong to the several States respectively, in which said lands are situated: *Provided, however,* That said grant of swamp and overflowed lands, as to the State of California, Minnesota, and Oregon, is subject to the limitations, restrictions and conditions hereinafter named and specified, as applicable to said three last-named States respectively. [R. S.]

Act of Sept. 28, 1850, ch. 84, 9 Stat. L. 520; Act of March 12, 1860, ch. 5, 12 Stat. L. 3.

Exception as to new states and the territory of New Mexico, and grant of other lands in lieu of swamp and overflowed lands, see Acts under div. XVI.

Grant made only to existing states.—This Act makes no grant of swamp lands to any of the territories, nor does a territory become entitled to a swamp-land grant from the United States upon its admission to the Union as a state, in the absence of a statute expressly conferring such grant, though the Act admitting it into the Union contains a provision to the effect that "all the laws of the United States which are not locally inapplicable shall have the same force and effect within that state as in the other states of the Union." *Rice v. Sioux City, etc., R. Co.,* (1884) 110 U. S. 695.

Grant in presenti.—The Act of Sept. 28, 1850, ch. 84, 9 Stat. L. 520, was, *ex proprio vigore*, a grant *in presenti* to the states then in existence of all the swamp and overflowed lands within their respective limits. This is true though the second section of the Act (R. S. 2480) required identification of the lands by the secretary of the interior before the issuance of patents therefor. The Act itself was a present grant to each state of all the lands within its limits of the particular description designated, wanting only a definition of boundaries to render the title perfect. It conveyed a fee-simple estate clogged by no conditions.

United States.—*Hannibal, etc., R. Co. v. Smith,* (1869) 9 Wall. (U. S.) 95; *French v. Fyan,* (1876) 93 U. S. 169; *Martin v. Marks,* (1877) 97 U. S. 345; *Rice v. Sioux City, etc., R. Co.,* (1884) 110 U. S. 695; *Wright v. Roseberry,* (1887) 121 U. S. 488; *Tubbs v. Wilhoit,* (1891) 138 U. S. 134; *Michigan Land, etc., Co. v. Rust,* (1897) 168 U. S. 589; *San Francisco Sav. Union v. Irwin,* (1886) 28 Fed. Rep. 708; *Kirby v. Lewis,* (1889) 39 Fed. Rep. 66; (1858) 9 Op. Att'y-Gen. 254.

Arkansas.—*Fletcher v. Pool,* (1859) 20 Ark. 100; *Hempstead v. Underhill,* (1859) 20 Ark. 337; *Branch v. Mitchell,* (1866) 24 Ark. 431; *Ringo v. Rotan,* (1874) 29 Ark. 56; *Hendry v. Willis,* (1878) 33 Ark. 833; *Chism v. Price,* (1891) 54 Ark. 251.

California.—*Owens v. Jackson,* (1858) 9

Cal. 322; *Summers v. Dickinson,* (1858) 9 Cal. 554; *Kernan v. Griffith,* (1864) 27 Cal. 87; *Lux v. Haggin,* (1886) 69 Cal. 255; *Shanklin v. McNamara,* (1891) 87 Cal. 371; *McCabe v. Goodwin,* (1895) 106 Cal. 486.

Illinois.—*Whiteside County v. Burchell,* (1863) 31 Ill. 68; *Dart v. Hercules,* (1864) 34 Ill. 395; *Keller v. Brickey,* (1875) 78 Ill. 133; *Wabash, etc., R. Co. v. McDougal,* (1885) 113 Ill. 603.

Indiana.—*Edmondson v. Corn,* (1878) 62 Ind. 17; *Matthews v. Goodrich,* (1885) 102 Ind. 557; *State v. Portsmouth Sav. Bank,* (1886) 106 Ind. 435; *Tolleston Club v. State,* (1894) 141 Ind. 197.

Iowa.—*Allison v. Halfacre,* (1861) 11 Iowa 450; *Barrett v. Brooks,* (1866) 21 Iowa 144; *Chicago, etc., R. Co. v. Brown,* (1875) 40 Iowa 333; *Page County v. Burlington, etc., R. Co.,* (1875) 40 Iowa 520; *Snell v. Dubuque, etc., R. Co.,* (1889) 78 Iowa 88; *Hays v. McCormick,* (1891) 83 Iowa 89; *American Emigrant Co. v. Fuller,* (1891) 83 Iowa 599; *Bailey v. Callanan,* (1893) 87 Iowa 107; *Nicodemus v. Young,* (1894) 90 Iowa 423; *Bourne v. Ragan,* (1896) 96 Iowa 566; *Smith v. Miller,* (1898) 105 Iowa 688.

Michigan.—*Busch v. Donohue,* (1875) 31 Mich. 481; *Sterling v. Jackson,* (1888) 69 Mich. 488; *State v. Sparrow,* (1891) 89 Mich. 263; *Sherman v. A. P. Cook Co.,* (1893) 98 Mich. 61; *Olds v. State Land Office Com'r,* (Mich. 1901) 86 N. W. Rep. 956; *People v. Warner,* (1898) 116 Mich. 228; *State v. Lake St. Clair Fishing, etc., Club,* (1901) 127 Mich. 580.

Mississippi.—*Fore v. Williams,* (1858) 35 Miss. 533; *Daniel v. Purvis,* (1874) 50 Miss. 261.

Missouri.—*Clarkson v. Buchanan,* (1873) 53 Mo. 563; *Campbell v. Wortman,* (1874) 58 Mo. 258; *Masterson v. Marshall,* (1877) 65 Mo. 94; *Simpson v. Stoddard County,* (1902) 173 Mo. 421.

Oregon.—*Gaston v. Stott,* (1873) 5 Oregon 48; *Miller v. Tobin,* (1887) 16 Oregon 540; *Warner Stock Co. v. Calderwood,* (1899) 36 Oregon 228.

Wisconsin.—*Diana Shooting Club v. La moreux,* (1902) 114 Wis. 44. *Contra, State v. School, etc., Land Com'rs,* (1859) 9 Wis. 236.

Compare *Pengra v. Munz,* (1887) 29 Fed.

Rep. 830; *Thompson v. Prince*, (1873) 67 Ill. 281; *Ogden v. Buckley*, (1902) 116 Iowa 352; *Funston v. Metcalf*, (1866) 40 Miss. 504; *Dowd v. Louisville, etc., R. Co.*, (1890) 68 Miss. 159; *Birch v. Gillis*, (1877) 67 Mo. 102; *Stephenson v. Stephenson*, (1879) 71 Mo. 127; *Prior v. Lambeth*, (1883) 78 Mo. 538.

Sufficiency of description for grant in present.—The description of the land as all "swamp and overflowed lands made unfit thereby for cultivation" is not too vague and indefinite to enable the Act to operate as a grant in present. *Wright v. Roseberry*, (1887) 121 U. S. 488; *Branch v. Mitchell*, (1866) 24 Ark. 431; *Owens v. Jackson*, (1858) 9 Cal. 322; *Gaston v. Stott*, (1873) 5 Oregon 48.

Sale by United States after passage of Act.—Since the Act of Sept. 28, 1850, ch. 84, § 9 Stat. L. 520, was a fee-simple grant in present, the United States thereby relinquished all power to make subsequent disposition of lands embraced therein. Hence, when land was actually swampy and overflowed at the time of the passage of the Act, a subsequent grant, sale, location, entry, or other disposition of such land adverse to the swamp-land grant is void unless confirmed or ratified by the state in which the land is situated; this, too, though the sale or grant is made before the state has had the land located and confirmed as swamp land.

United States.—*Burlington, etc., R. Co. v. Fremont County*, (1869) 9 Wall. (U. S.) 89, affirming (1867) 22 Iowa 91; *Hannibal, etc., R. Co. v. Smith*, (1869) 9 Wall. (U. S.) 95; *French v. Fyan*, (1876) 93 U. S. 169; *Wright v. Roseberry*, (1887) 121 U. S. 488; *Rogers Locomotive Mach. Works v. American Emigrant Co.*, (1896) 164 U. S. 559; *Kirby v. Lewis*, (1889) 39 Fed. Rep. 66; (1858) 9 Op. Atty-Gen. 253.

Arkansas.—*Branch v. Mitchell*, (1866) 24 Ark. 431; *Ringo v. Rotan*, (1874) 29 Ark. 56; *Hendry v. Willis*, (1878) 33 Ark. 833; *Chism v. Price*, (1891) 54 Ark. 251.

California.—*Kernan v. Griffith*, (1864) 27 Cal. 87; *Kile v. Tubbs*, (1881) 59 Cal. 192; *Sacramento Valley Reclamation Co. v. Cook*, (1882) 61 Cal. 341.

Illinois.—*Keller v. Brickey*, (1875) 78 Ill. 133.

Indiana.—*Matthews v. Goodrich*, (1885) 102 Ind. 557; *Tolleston Club v. State*, (1894) 141 Ind. 197.

Iowa.—*Chicago, etc., R. Co. v. Brown*, (1875) 40 Iowa 333; *Page County v. Burlington, etc., R. Co.*, (1875) 40 Iowa 520; *Snell v. Dubuque, etc., R. Co.*, (1889) 73 Iowa 88; *Bailey v. Callanan*, (1893) 87 Iowa 107.

Michigan.—*Busch v. Donohue*, (1875) 31 Mich. 481; *Sherman v. A. P. Cook Co.*, (1893) 98 Mich. 61.

Mississippi.—*Daniel v. Pervis*, (1874) 50 Miss. 261.

Missouri.—*Foster v. Evans*, (1872) 51 Mo. 39; *Campbell v. Wortman*, (1874) 58 Mo. 258; *Hannibal, etc., R. Co. v. Sneed*, (1877) 65 Mo. 239.

Oregon.—*Miller v. Tobin*, (1887) 16

Oregon 540; *Warner Stock Co. v. Calderwood*, (1899) 36 Oregon 228.

Compare *Thompson v. Prince*, (1873) 67 Ill. 281; *Prior v. Lambeth*, (1883) 78 Mo. 538, holding that an entry made under other laws by another person prior to the selection or designation of the land as swamp land is valid as against one claiming under this Act though the land is actually swamp. *Compare* also *Funston v. Metcalf*, (1866) 40 Miss. 504.

If a patent is issued pursuant to an adverse grant or sale made by the United States after the passage of this Act, it cannot be impeached collaterally by parol evidence. *Ehrhardt v. Hogaboom*, (1885) 115 U. S. 67; *Cahn v. Barnes*, (1881) 5 Fed. Rep. 326; *Iowa Railroad Land Co. v. Antoine*, (1879) 52 Iowa 429.

And where for more than twenty-eight years a state and the United States united in regarding the land in controversy as not being swamp, it was held that a person not claiming under the swamp-land grant could not set up such grant to defeat a title resting on a United States patent. *Davis v. Nolan*, (1878) 49 Iowa 683.

And the swamp-land claimant was held estopped to deny the title of one claiming under a United States patent where the patentee had been in open and notorious possession of the land in controversy for more than thirty years, and had paid taxes thereon for such period, and it was doubtful if the land was swamp and overflowed within the meaning of the statute. *Knapp v. Paine*, (1895) 95 Iowa 64.

Estoppel to claim lands under Swamp-land Act.—Where, since the enactment of the Swamp-land Act, the United States has granted lands to a state for other purposes, such as the construction of railroads, etc., and certain lands are certified to the state as inuring to it under the later Act, and the state does not question the correctness of this certification, it is estopped to claim that the lands in fact inured to it under the Swamp-land Act. *McCormic v. Hayes*, (1895) 159 U. S. 332; *Hough v. Buchanan*, (1886) 27 Fed. Rep. 328; *Pengra v. Munz*, (1887) 29 Fed. Rep. 834; *Rogers Locomotive Mach. Works v. American Emigrant Co.*, (1896) 164 U. S. 559, reversing (1891) 83 Iowa 612; *Chandler v. Calumet, etc., Min. Co.*, (1888) 36 Fed. Rep. 665, affirmed (1893) 149 U. S. 79; *Young v. Charnquist*, (1901) 114 Iowa 116; *State v. Flint, etc., R. Co.*, (1891) 89 Mich. 481, writ of error dismissed (1894) 152 U. S. 363. See also *Crapo v. Troy Tp.*, (1894) 98 Mich. 635.

As a county is a mere agency of the state, this estoppel is binding on a county to which the state granted its swamp lands prior to the subsequent conflicting grant to the state. *Rogers Locomotive Mach. Works v. American Emigrant Co.*, (1896) 164 U. S. 559, reversing (1891) 83 Iowa 612.

And it is likewise binding on individuals claiming under the state by an agreement entered into after the lands had been certified to the state as inuring to it under the later Act. *Rogers Locomotive Mach. Works v.*

American Emigrant Co., (1896) 164 U. S. 559, *reversing* (1891) 83 Iowa 612; *Cahn v. Barnes*, (1881) 5 Fed. Rep. 326; *Pengra v. Munz*, (1887) 29 Fed. Rep. 830.

As to relinquishment by state, see *infra*, notes to R. S. 2482.

Statute includes swamp land and overflowed land.—The Act includes two kinds of land, swamp and overflowed. If by reason of either swamp or overflow the land is rendered unfit for cultivation it comes within the purview of the Act. *Merrill v. Tobin*, (1887) 30 Fed. Rep. 738.

Construction of terms "swamp" and "overflowed."—"Now, lands 'subject to overflow,' or 'subject to overflow from slough,' or 'subject to periodical overflow,' are not necessarily such as come within the descriptive terms of those inuring to the state under the swamp-land grant. Whether the terms 'swamp' and 'overflowed' when connected by the particle 'and' be taken together as a general term of description for the lands granted by the Swamp-land Act, or whether those terms are separable and refer to two different qualities of lands thus granted, makes little or no difference in this consideration. If the former theory be the correct one, then manifestly the meaning of the phrase is entirely different from the phrase 'subject to periodical overflow.' And if the latter theory be adopted, still we think there is a marked distinction between the terms 'overflowed' and 'subject to periodical overflow.' The term 'overflowed,' as thus used, has reference to a permanent condition of the lands to which it is applied. It has reference to those lands which are overflowed and will remain so without reclamation or drainage; while 'subject to periodical overflow' has reference to a condition which may or may not exist, and which when it does exist is of a temporary character. It was never intended that all the public lands which perchance might be temporarily overflowed at the time of freshets and high waters, but which, for the greater portion of the year, were dry lands, should be granted to the several states as 'swamp and overflowed' lands." *Heath v. Wallace*, (1891) 138 U. S. 573, *affirming* (1886) 71 Cal. 50.

"Swamp lands, as distinguished from overflowed lands, may be considered such as require drainage to fit them for cultivation. Overflowed lands are those which are subject to such periodical or frequent overflows as to require levees or embankments to keep out the water, and render them suitable for cultivation. It does not make any difference whether the overflow be by fresh water, as by the rising of rivers or lakes, or by the flow of the tides. When drainage, reclamation, or leveeing is necessary to enable the farmer to use them for some of the ordinary purposes of husbandry, the lands are within the terms of the Act of Congress, and the title passed by it to the state." *San Francisco Sav. Union v. Irwin*, (1886) 28 Fed. Rep. 708.

"Swamp and overflowed" equivalent to "wet and unfit for cultivation."—"The phrase 'swamp and overflowed,' as defined

by section 2 of the Arkansas Swamp-land Act of 1850, is merely the equivalent of the phrase 'wet and unfit for cultivation,' and therefore land which is too 'wet' for cultivation is 'swamp and overflowed,' whether the water flows over it or stands upon it. In this sense the adjectives 'swamp' and 'overflowed,' taken together, qualify the noun 'land' in but one particular—express but one fact concerning it—that is, it is too wet for cultivation." *Miller v. Tobin*, (1883) 18 Fed. Rep. 609.

"Low and swamp lands holding rain water and overflowing to a great depth are clearly of the character contemplated by the law." *Branch v. Mitchell*, (1866) 24 Ark. 431.

Land not overflowed annually.—It was not intended by this Act that the land should be overflowed annually, it being sufficient if it was subject to overflow and required artificial means to subject it to beneficial use. Hence, a tract of land that is swampy and the greater portion of which is wet and unfit for cultivation, is swamp and overflowed land within the meaning of these Acts. *Keller v. Brickey*, (1875) 78 Ill. 133.

Land subject to overflow by tides.—Where lands were subject to periodical overflow by the tides, so as to make them unfit to raise the ordinary crops of the country without levees to protect them from such overflow, they were considered to be overflowed lands within the meaning of this Act. *San Francisco Sav. Union v. Irwin*, (1886) 28 Fed. Rep. 708, *distinguished* in *Baer v. Moran Bros. Co.*, (1891) 2 Wash. 608, wherein it was said that the lands involved in the principal case were ones over which the high monthly tides flowed but not the ordinary daily tides.

Lands not susceptible of profitable reclamation.—By this Act all swamp lands were granted that the state might thereby acquire a fund for general drainage purposes. The grant included lands which could not be profitably reclaimed as well as those susceptible of profitable reclamation by drains and levees. *People v. Warner*, (1898) 116 Mich. 228.

Islands included in grant.—The Act applies to islands as well as to the mainland, provided the islands are actually swamp and overflowed lands within the meaning of the statute. *People v. Warner*, (1898) 116 Mich. 228.

And where a strip of unsurveyed land connected with an island in a navigable lake was, in its natural state, in some places a few inches above and in others slightly below the ordinary water level, and was at times entirely submerged, it was held not to constitute a part of the bed of the lake but to be swamp and overflowed land within the meaning of this section, so as to pass to the state of Michigan thereunder. *State v. Lake St. Clair Fishing, etc., Club*, (1901) 127 Mich. 580.

Bed of river as overflowed land.—Where a navigable river changed its course, forming a new channel, it was held that the bed of the old channel was not swamp and overflowed land within the meaning of this statute though each succeeding freshet brought

down some sediment, which filled up the old channel to a certain extent. *Edwards v. Rolley*, 96 Cal. 408.

Non-navigable waters as overflowed lands.—Where it appeared that a small lake was not a tributary of any other body of water and was inaccessible except by land, and that it was impossible to use it for purposes of travel or commerce or for purposes of pleasure other than that of hunting, it was held that it was entirely competent for the United States, by its survey and patent, to sell and convey the lands beneath the waters of such lake as swamp and overflowed lands, and for the state to receive and convey them as such without reservation or restriction. *Lamprey v. Danz*, (1902) 86 Minn. 317.

The artificial submersion of land will not prevent it from being swamp and overflowed land so as to pass to the state under the terms of this Act. *Diana Shooting Club v. Lamoreux*, (1902) 114 Wis. 44.

Beds of shallow lakes.—Permanently overflowed swamps, so-called shallow lakes, which are destined to become dry as the direct and necessary result of the building of the levees in aid of the construction of which the swamp-land grants were made, passed as lands under those grants. The Acts making the grants contemplated that these areas would be reclaimed, and therefore within the purview of the Acts they were land. *McDade v. Bossier Levee Board*, (1902) 109 La. 625. See also *Indiana v. Milk*, (1882) 11 Fed. Rep. 389.

Land under water included in grant to state of Indiana.—In a proceeding brought by a purchaser from the state of Indiana to quiet the title to certain land bordering on and extending under certain non-navigable water up to the state line, where it appeared that the state got its title under this statute and that the patent from the United States described the whole of fractional sections enumerated and bordering on the water, in which sections the disputed land lay, and that after the grant the water receded, it was held that the location made by the state must be presumed to have included the land overflowed at the time of the grant to it, as well as the land not under water at that time, and that therefore it acquired and conveyed a good title to the holder of the land in dispute, though the land under water was not embraced in the survey made before the issuance of the patent by the United States—it appearing that the land surrounding the water was surveyed so that the identification of the submerged portion was absolute. It was also held, that the making of a meander line had no certain signification and did not necessarily import that the tract on the other side of it was not surveyed or would not pass by a conveyance of the upland, shown by the plat to border on the water, but that in the case at bar its immediate import was only to indicate the contour of the water. It was further held, that a resurvey made by the United States after the grant to the state did not affect the grantee's rights, as it had no jurisdiction to make such resurvey. *Kean v. Calumet Canal, etc., Co.*, (1903) 190

U. S. 452, *White and McKenna, J. dissenting*.

Land "unfit for cultivation."—"Land can be cultivated, within the meaning of the Act, is arable land—that which is adapted to the raising of crops which require planting and tillage, as corn, wheat, rye, and barley, in this country—and is susceptible of such cultivation in all ordinary seasons." *American Emigrant Rogers Locomotive Mach. Works*, (1887) 18 Iowa 612, *reversed* on other grounds 164 U. S. 559.

Land is to be considered as unfit for cultivation if, by reason of the overflow to which it is subject, it is not susceptible of cultivation in grain or other staple products. *Keeran v. Griffith*, (1866) 31 Cal. 461; *Keeran v. Allen*, (1867) 33 Cal. 542. See also *McTobin*, (1887) 30 Fed. Rep. 738.

Land is not rendered fit for cultivation by the mere fact that it will produce a crop of hay having a market value, or a crop of grass may spring up after the flow subsides, as there are but few parcels of land that are rendered barren by overflows and yet they may be unfit for cultivation of staple products unless protected by levees. *Keeran v. Griffith*, 31 Cal. 461. And see *McConaughy v. Keeran*, (1888) 33 Fed. Rep. 449; *American Emigrant Co. v. Rogers Locomotive Mach. Works*, (1891) 83 Iowa 612, *reversed* on other grounds (1896) 164 U. S. 559.

Land capable of "successful" cultivation.—If the lands, by reason of the overflow, are usually rendered unfit for the successful cultivation of staple crops, they are swamp and overflowed lands within the meaning of the Act. Hence, it was not erroneous in the trial court, after instructing the jury that if the lands were not by reason of the overflow rendered unfit for cultivation in staple crops enumerated, they were not "swamp and overflowed," to give the jury the instruction that the fact that any staple crops above specified might be raised and raised on the land, was not the test that was required, but that the jury should also consider whether such crops or any of them might be cultivated successfully. *Thompson v. Thornton*, (1875) 50 Cal. 402.

Distinction between "profitably" and "successfully" cultivated.—Where the trial court instructed the jury that if after the subsidence of the waters the land had been profitably cultivated each year for the majority of a series of years, that the land was not swamp and overflowed land within the meaning of the Act, it was held that the instruction was erroneous, the proper test being whether the land was capable of successful cultivation and not whether it might be cultivated profitably, the word "successfully" not being the synonym of "profitably," as the character and conditions of the soil might be such that its cultivation would be unprofitable though the land was in no sense swamp and overflowed land. *Wright v. Carpenter*, 47 Cal. 436.

Cultivability of neighboring lands.—

it was sought to show that lands subject to overflow were susceptible of cultivation after the subsidence of the waters, and it did not appear that the land in question had been actually cultivated, it was held that it was proper to admit evidence that other lands in the neighborhood similarly situated, but subject to deeper overflow, and therefore less fit for cultivation, produced staple crops. In deciding the question the court said that the evidence tended to prove that the land involved in the suit would also produce staple crops, and that it was the only reasonably certain evidence of the fact, in the absence of actual experiment on the land itself. *Keeran v. Allen*, (1867) 33 Cal. 542.

Land cultivable though overflowed annually.—Though land is subject to annual overflow, it is not thereby rendered unfit for cultivation within the meaning of this section, if regularly and annually, after the subsidence of the waters, a crop of grain or other staple products can be cultivated and produced successfully—such as wheat, rye, barley, oats, corn, buckwheat, peas, or beans. *Keeran v. Allen*, (1867) 33 Cal. 542.

Character of land at date of grant controls.—In determining the question as to whether or not land is swamp and overflowed within the meaning of this Act, its character must be ascertained as of the date of the grant. *Kirby v. Lewis*, (1889) 39 Fed. Rep. 66; *Kernan v. Griffith*, (1864) 27 Cal. 87, (1866) 31 Cal. 462; *Robinson v. Forrest*, (1865) 29 Cal. 317; *Thompson v. Thornton*, (1875) 50 Cal. 142; *Ogden v. Buckley*, (1902) 116 Iowa 352; *Connors v. Meserve*, (1888) 76 Iowa 691; *Young v. Hanson*, (1895) 95 Iowa 717; *Sterling v. Jackson*, (1888) 69 Mich. 488. Hence, lands which were passed to the state by reason of the fact that they were swamp and overflowed at the time of the passage of the Act, remained the property of the state though they subsequently became dry or were submerged by inroads from lakes or other waters. *Sterling v. Jackson*, (1888) 69 Mich. 488.

On the other hand, lands submerged in a navigable river at the passage of the Act did not become the property of the state under this Act, on subsequently arising into an island. *Holman v. Hodges*, (1901) 112 Iowa 714. And a subsequent change in the bed of a navigable river did not vest in the state title to the old channel as swamp or overflowed land. *Edwards v. Rolley*, (1892) 96 Cal. 408.

In an action concerning the title of swamp lands brought many years after the passage of this Act, it was held that evidence of the character of the land at the time of the trial was inadmissible. *Connors v. Meserve*, (1888) 76 Iowa 691; *Young v. Hanson*, (1895) 95 Iowa 717.

But evidence that the land in controversy was of a swampy character before the prairie sod in that part of the state had been broken, has been held sufficient to prove that it was of such a character at the date of the passage of this Act, though the evidence did not run back to such date. *Bourne v. Ragan*, (1896) 96 Iowa 566.

Question as to character of land one of fact.—The question as to whether or not lands returned as "subject to periodical overflow" are within the descriptive terms of those granted by this Act—that is, whether they are "swamp or overflowed"—is a question of fact properly determinable by the land department. *Heath v. Wallace*, (1891) 138 U. S. 573, *affirming* (1886) 71 Cal. 50; *Smith v. Hollis*, (1885) 46 Ark. 17.

In like manner the question as to whether or not certain lands were swamp and overflowed on the date of the passage of the Act of Sept. 28, 1850, is one of fact to be determined by the jury on the evidence submitted. *Kernan v. Griffith*, (1864) 27 Cal. 87, (1866) 31 Cal. 461.

Conclusiveness of department's decision as to scope of grant.—The decision of the secretary of the interior, in November, 1855, that those lands which had been reserved by the President under the Act of Sept. 20, 1850, ch. 81, granting lands to the state of Illinois to aid in the construction of a railroad, did not pass to the state by virtue of the swamp-land grant of Sept. 28, 1850, ch. 84, is to be treated as *res adjudicata* as to all the lands embraced within the belt of territory to which it specifically relates and refers. (1881) 17 Op. Atty.-Gen. 27.

And this is true notwithstanding the fact that the decision of the secretary was made after the passage of the Act of Sept. 28, 1850, ch. 84, but before the passage of R. S. 2479, as the adoption of the Revised Statutes did not create a new state of the law so as to annul prior decisions or to authorize the head of an executive department to re-examine legal questions determined by his predecessors. (1881) 17 Op. Atty.-Gen. 27; *Illinois v. U. S.*, (1885) 20 Ct. Cl. 342.

Grant severs land from public domain.—This Act, by clear and apt description, granted to the state absolutely all the public lands therein that were then swamp and overflowed, and segregated them from the mass of the public domain. Hence, an *ex parte* survey of those lands by the government after the passage of the Act cannot be considered as having any just relation to the power reserved to the United States by the Act admitting California to the Union (passed before the Swamp-land Act) providing as a condition of admission that the people of California should never, either through their legislature or otherwise, interfere with the primary disposal of the public lands within the limits of the state. *Kernan v. Griffith*, (1864) 27 Cal. 87.

Lands excluded from operation of grant.—The intention of the statute was to exclude from the grant all the swamp and overflowed lands in which the United States had, by contract, for a valuable consideration, given vested rights to individuals or the states before the passage of the Act. Hence, the grant excludes land located on a military land warrant prior to the passage of the Act, though no patent therefor was issued to the locator until after the Act was passed. *Culver v. Uthe*, (1890) 133 U. S. 655.

And the grant does not cover land previ-

ously granted to a state for school purposes. *School Trustees v. Schroll*, (1887) 120 Ill. 509.

It has been held that it was not the intention of Congress to grant by this Act to the state of California swamp and overflowed lands within the exterior boundaries of a prior Mexican grant, though in the confirmation of the Mexican grant such lands were eventually excluded. *Shanklin v. McNamara*, (1891) 87 Cal. 371.

Similarly, this Act was not intended to apply to land held by the United States charged with any equitable claims of others

which it was bound by treaty to protect. Therefore the state of California took within its limits under this Act subject to the interests of pueblos in any lands within their limits acquired prior to the passage of the Act. *San Francisco v. Le Roy*, (1838) 138 U. S. 656.

Lands granted Florida for school purposes.—This Act does not apply to or embrace sixteen sections granted to the state of Florida for school purposes by the Act of March 3, 1845, ch. 48, 5 Stat. L. 742. *v. Jennings*, (Fla. 1903) 35 So. Rep. 986.

Sec. 2480. [*Secretary of the Interior to make lists of such lands, for transmission to the governors of the States.*] It shall be the duty of the Secretary of the Interior, to make accurate lists and plats of all such lands, and transmit the same to the governors of the several States in which such lands may lie, and at the request of the governor of any State in which said swamp and overflowed lands may be, to cause patents to be issued to said State therefor, conveying said State the fee-simple of said land.

The proceeds of said lands, whether from sale or by direct appropriation of any kind, shall be applied exclusively, as far as necessary, to the reclaiming of said lands, by means of levees and drains. [R. S.]

Act of Sept. 28, 1850, ch. 84, 9 Stat. L. 519.

Identification and patent perfect title in state.—When the secretary of the interior makes the identification provided for by this section, then, and not before, the state is entitled to a patent, and on the issuance of such patent the fee-simple title vests in the state. The state's title at the outset is an inchoate one and does not become perfect as of the date of the Act until a patent is issued. *Rogers Locomotive Mach. Works v. American Emigrant Co.*, (1896) 164 U. S. 559; *Michigan Land, etc., Co. v. Rust*, (1897) 168 U. S. 589; *Brown v. Hitchcock*, (1899) 173 U. S. 473; *Pengra v. Munz*, (1887) 29 Fed. Rep. 830; *Kile v. Tubbs*, (1863) 23 Cal. 431; *Ogden v. Buckley*, (1902) 116 Iowa 352; *Lockwood v. Hannibal, etc., R. Co.*, (1877) 65 Mo. 233. See also *Funston v. Metcalf*, (1866) 40 Miss. 504; *Dowd v. Louisville, etc., R. Co.*, (1890) 68 Miss. 159; *Birch v. Gillis*, (1877) 67 Mo. 102; *Stephenson v. Stephenson*, (1879) 71 Mo. 127.

State's title not dependent on patent.—The object of this section was not to postpone vestiture of title in the state until a patent should issue, but was to provide for the ascertainment of boundaries and to prevent premature interference with the lands by the state legislature before they were so designated as to avoid mistake and confusion. *Fletcher v. Pool*, (1859) 20 Ark. 100; *Branch v. Mitchell*, (1866) 24 Ark. 431; *Gaston v. Stott*, (1873) 5 Oregon 48.

It is sufficient that the lands should have been selected as swamp and overflowed, and the selection approved by the secretary of the interior. *State v. Portsmouth Sav. Bank*, (1886) 106 Ind. 435; *Masterson v. Marshall*, (1877) 65 Mo. 94.

The Act itself acted as a conveyance, *Owens v. Jackson*, (1858) 9 Cal. 322; *Summers v. Dickinson*, (1858) 9 Cal. 554; *Kernan v. Griffith*, (1864) 27 Cal. 87; *Masterson v.*

Marshall, (1877) 65 Mo. 94; and the proof is merely the evidence of title. *McCann v. Goodwin*, (1895) 106 Cal. 486; *Warner v. Co. v. Calderwood*, (1899) 36 Oregon 228.

Right of state to dispose of land by patent.—The state may sell or otherwise dispose of land enuring to it under this Act though it has received no patent therefor from the United States. *Owens v. Jackson*, (1858) 9 Cal. 322; *Kernan v. Griffith*, (1864) 27 Cal. 87.

But a patent issued by the state under circumstances is of no greater legal effect than a quitclaim of whatever title the state may have at the time of the issuance of the patent, so that it is of no force if the land is not actually swamp. *Kile v. Tubbs*, (1863) 23 Cal. 431.

Hence the title to the state's grant of land is liable to be defeated by a decision of the secretary of the interior that the land was not actually swamp and overflowed at the time of the passage of the Act. *State v. Portsmouth Sav. Bank*, (1886) 106 Ind. 435.

Patent relates back to passage of Act.—As a corollary to the propositions that the grant of this Act was *in presenti*, and that the subsequent grant or disposition by the United States of the lands embraced therein is subject to the patent, when a patent issues from the United States to a state under this Act, the state's title to the particular land patented (when thus perfected) relates back to the date of the passage of the Act, so as to defeat adverse claims intervening between the date of the Act and the date of the patent.

United States.—*French v. Fyan*, (1877) 93 U. S. 169; *Martin v. Marks*, (1877) U. S. 345; *Pengra v. Munz*, (1887) 29 Fed. Rep. 830; (1858) 9 Op. Atty-Gen. 254.

Arkansas.—*Hempstead v. Underwood*, (1859) 20 Ark. 337; *Hendry v. W. W. Price*, (1878) 33 Ark. 833; *Chism v. Price*, (1878) 54 Ark. 251.

California.—Sacramento Valley Reclamation Co. v. Cook, (1882) 61 Cal. 341; Lux v. Haggin, (1886) 69 Cal. 255.

Indiana.—Hamilton v. Shoaff, (1884) 99 Ind. 63; Matthews v. Goodrich, (1885) 102 Ind. 557; State v. Portsmouth Sav. Bank, (1886) 106 Ind. 436.

Michigan.—Busch v. Donohue, (1875) 31 Mich. 481.

Missouri.—Cramer v. Keller, (1889) 98 Mo. 279; Simpson v. Stoddard County, (1902) 173 Mo. 421.

Oregon.—Warner Stock Co. v. Calderwood, (1899) 36 Oregon 228.

See also Smith v. Goodell, (1872) 66 Ill. 450, holding that the patent relates back at least to the date of the approval of the state's selection of lands as swamp and overflowed.

Compare Prior v. Lambeth, (1883) 78 Mo. 538, holding that the patent does not relate back so as to defeat the title of third persons entering the land under another law prior to its selection or designation as swamp land.

Conclusiveness of United States patent as to character of land.—A patent for swamp and overflowed land issued by the secretary of the interior is ordinarily conclusive of the question of the character of the land and is not subject to collateral attack, but may be avoided only in a direct equitable proceeding brought for that purpose.

United States.—French v. Fyan, (1876) 93 U. S. 169; San Francisco Sav. Union v. Irwin, (1886) 28 Fed. Rep. 708; Pengra v. Munz, (1887) 29 Fed. Rep. 830.

Arkansas.—Hendry v. Willis, (1878) 33 Ark. 833.

Indiana.—Hamilton v. Shoaff, (1884) 99 Ind. 63; Matthews v. Goodrich, (1885) 102 Ind. 557.

Michigan.—State v. Lake St. Clair Fishing, etc., Club, (1901) 127 Mich. 580.

Minnesota.—Lamprey v. Danz, (1902) 86 Minn. 317.

Oregon.—Warner Stock Co. v. Calderwood, (1899) 36 Oregon 229.

Wisconsin.—Diana Shooting Club v. Lamoreux, (1902) 114 Wis. 44.

Compare Cramer v. Kellef, (1889) 98 Mo. 279, holding that the patent is *prima facie* evidence that the land is swamp and overflowed, and that the burden of proof is on one who asserts that the secretary of the interior did not approve the selection of the land in question as swamp and overflowed.

In Roy v. Duluth, etc., R. Co., (1897) 69 Minn. 547, *affirmed* (1899) 173 U. S. 587, it was held that if through fraud, inadvertence, or mistake a patent is issued by the secretary for land high and cultivable, one who has made a homestead entry on such land is the equitable owner thereof and is entitled to a judgment barring the swamp-land patentee, and those claiming under him, from asserting any adverse right to the land.

Decision by secretary of interior as to character of land.—This section devolved on the secretary of the interior, as the head of the department which administered the affairs of the public lands, the duty, and conferred on him the power, of determining what lands were of the description granted

by the Act, and made his office the tribunal whose decision on that subject was to be controlling.

United States.—French v. Fyan, (1876) 93 U. S. 169; Heath v. Wallace, (1891) 138 U. S. 573, *affirming* (1886) 71 Cal. 50.

Arkansas.—Smith v. Hollis, (1885) 46 Ark. 17.

California.—Sacramento Valley Reclamation Co. v. Cook, (1882) 61 Cal. 341.

Indiana.—State v. Portsmouth Sav. Bank, (1886) 106 Ind. 445.

Missouri.—Masterson v. Marshall, (1877) 65 Mo. 94; Jasper County v. Wadlow, (1884) 82 Mo. 172; Cramer v. Keller, (1889) 98 Mo. 279.

Wisconsin.—Diana Shooting Club v. Lamoreux, (1902) 114 Wis. 44.

Hence the action of the secretary of the interior in identifying lands as swamp and overflowed lands passing to a state under the provisions of this statute, is conclusive against collateral attack, though no patent for such lands has been issued by the United States to the state.

United States.—Wright v. Roseberry, (1887) 121 U. S. 488; Heath v. Wallace, (1891) 138 U. S. 573, *affirming* (1886) 71 Cal. 50.

Arkansas.—Hendry v. Willis, (1878) 33 Ark. 833.

Illinois.—Bristol v. Carroll County, (1880) 95 Ill. 84.

Iowa.—Rood v. Wallace, (1899) 109 Iowa 5.

Michigan.—People v. Warner, (1898) 116 Mich. 228.

Missouri.—Masterson v. Marshall, (1877) 65 Mo. 94; Jasper County v. Wadlow, (1884) 82 Mo. 172; Jasper County v. Mickey, (Mo. 1887) 4 S. W. Rep. 424.

Oregon.—Warner Stock Co. v. Calderwood, (1899) 36 Oregon 228.

In like manner the decision of the secretary rejecting a selection by the state of lands claimed to be swamp and overflowed is final and conclusive as against collateral attack. Heath v. Wallace, (1891) 138 U. S. 573, *affirming* (1886) 71 Cal. 50; Chandler v. Calumet, etc., Min. Co., (1893) 149 U. S. 79, *affirming* (1888) 36 Fed. Rep. 665; Rogers Locomotive Mach. Works v. American Emigrant Co., (1896) 164 U. S. 559; Michigan Land, etc., Co. v. Rust, (1897) 168 U. S. 589; Pengra v. Munz, (1887) 29 Fed. Rep. 830; Crane Creek Shooting Club Co. v. Cedar Point Club Co., (1891) 46 Fed. Rep. 273; Smith v. Hollis, (1885) 46 Ark. 17. See also Funston v. Metcalf, (1866) 40 Miss. 504.

What constitutes making list by secretary.—The provision that the secretary of the interior shall make a list of lands passing under the Act, merely requires that the lands shall be ascertained and located under the authority and with the approval of the secretary. Hence, the confirmation by the secretary of a list of lands as swamp and overflowed, made by a commission appointed by the governor of a state, is sufficient. Fore v. Williams, (1858) 35 Miss. 533.

Effect of secretary's failure to determine character of land.—The failure, refusal, or

delay of the secretary of the interior to determine the question whether or not particular land is swamp and overflowed so as to pass to the state under the operation of this Act, does not defeat or impair the right of the state to land which is in fact clearly swamp and overflowed, as its right to such land does not depend on the action of the secretary, but on the Act of Congress. And when the secretary has failed to perform the duty imposed on him by this section, the fact that the land is of the character described by the statute may be shown by competent parol evidence, such as the testimony of witnesses who are familiar with the land, or by any other proper mode which will effect the desired object.

United States.—Hannibal, etc., R. Co. v. Smith, (1869) 9 Wall. (U. S.) 95; Wright v. Roseberry, (1887) 121 U. S. 488; San Francisco Sav. Union v. Irwin, (1886) 28 Fed. Rep. 708; Chandler v. Calumet, etc., Min. Co., (1888) 36 Fed. Rep. 665, *affirmed* (1893) 149 U. S. 79.

California.—Thornton v. Thompson, (1865) 28 Cal. 602; Keeran v. Griffith, (1866) 31 Cal. 461, (1868) 34 Cal. 580; Keeran v. Allen, (1867) 33 Cal. 542; Lux v. Haggin, (1886) 69 Cal. 255.

Illinois.—Wabash, etc., R. Co. v. McDougal, (1885) 113 Ill. 603.

Indiana.—State v. Portsmouth Sav. Bank, (1886) 106 Ind. 435.

Iowa.—Chicago, etc., R. Co. v. Brown, (1875) 40 Iowa 333; Snell v. Dubuque, etc., R. Co., (1889) 78 Iowa 88; Hays v. McCormick, (1891) 83 Iowa 89; American Emigrant Co. v. Fuller, (1891) 83 Iowa 599; Bailey v. Callanan, (1893) 87 Iowa 107.

Michigan.—People v. Warner, (1898) 116 Mich. 228; State v. Lake St. Clair Fishing, etc., Club, (1901) 127 Mich. 580.

Mississippi.—Daniel v. Purvis, (1874) 50 Miss. 261.

Missouri.—Clarkson v. Buchanan, (1873) 53 Mo. 563; Campbell v. Wortman, (1874) 58 Mo. 258; Funkhouser v. Peck, (1877) 67 Mo. 19.

Compare Funston v. Metcalf, (1866) 40 Miss. 504; Dowd v. Louisville, etc., R. Co., (1890) 68 Miss. 159; Birch v. Gillis, (1877) 67 Mo. 102; Stephenson v. Stephenson, (1879) 71 Me. 127; Prior v. Lambeth, (1883) 78 Me. 538.

Resort by the state to such mode of identification would seem to be permissible where the secretary declares his inability to certify the lands to the state for any cause other than a consideration of their character. Wright v. Roseberry, (1887) 121 U. S. 488, *followed* in People v. Warner, (1898) 116 Mich. 228; State v. Lake St. Clair Fishing, etc., Club, (1901) 127 Mich. 580.

If the secretary, in making out his lists, omits lands really swamp and overflowed and unfit for cultivation, the state does not thereby lose its right to take such lands under the grant of this statute. Branch v. Mitchell, (1866) 24 Ark. 431.

On the other hand, when the party claiming adversely to the swamp-land claimant has a patent from the United States, parol

evidence that the land is in fact swampy inadmissible to impeach such patent. *Hardt v. Hogaboom*, (1885) 115 U. S. 301; *Cahn v. Barnes*, (1881) 5 Fed. Rep. 326; *Wright v. Haggin*, (1886) 69 Cal. 255; *Iowa Road Land Co. v. Antoine*, (1879) 52 Iowa 429. See also *McCormick v. Hayes*, (1875) 159 U. S. 332; *Palmer v. Born*, (1883) 100 Mo. 99. *Compare* Miller v. Tobin, (1887) Oregon 540, holding that such a patent absolutely void and may be collaterally impeached in any action.

Burden of proving that land is swamp and overflowed.—When a particular tract of land has not been patented to the state or certified by the secretary of the interior as being swamp and overflowed, the burden of proving that it is of such character is on the party so claiming. Wright v. Roseberry, (1887) 121 U. S. 488; Kirby v. Lewis, (1889) 39 Fed. Rep. 708; Hays v. McCormick, (1891) 83 Iowa 89.

Distinction between "selection" and "identification."—The word "selection" applies more naturally to the action of the grantee in reporting to the land department the lands which it claims than to the action of the land officers in identifying from the field notes what are and what are not swamp and overflowed lands. The term "selection" is not an apt word to describe the identification of certain lands according to evidence presented of their character. *Michigan Land & Lumber Co. v. Rust*, (1897) 168 U. S. 589.

Effect of ex parte survey by state.—*United States.*—When the state and the United States proceed independently to determine the position and extent of the swamp and overflowed lands within the limit of state, neither is bound by the action of the other. *Kernan v. Griffith*, (1864) 27 Cal. 87; *Keeran v. Griffith*, (1866) 31 Cal. 461.

Though an *ex parte* survey by the United States is admissible in evidence for the purpose of showing the lines of the subdivision, it cannot be used to prove that the lands therein are or are not swamp and overflowed. *Robinson v. Forrest*, (1865) 29 Cal. 318; *Keeran v. Griffith*, (1866) 31 Cal. 461.

State patent or selection as prima facie evidence of character of land.—A patent from the state for lands determined by *ex parte* proceedings to be swamp and overflowed lands inuring to it under this Act is not conclusive as to the character of the lands patented as against one who claims the lands under title derived from the United States. *Kile v. Tubbs*, (1863) 23 Cal. 461; *People v. Stratton*, (1864) 25 Cal. 25; *Robinson v. Forrest*, (1865) 29 Cal. 318; *People v. Caruthers*, (1873) 47 Cal. 181.

And it has been held that under such circumstances the patent from the state is even *prima facie* evidence of the character of the lands which it covers. *Keeran v. Griffith*, (1866) 31 Cal. 461; *Keeran v. Allen*, (1866) 31 Cal. 542. See also *Dowd v. Louisville, etc., R. Co.*, (1890) 68 Miss. 159. *Compare* *Hendry v. Willis*, (1878) 33 Ark. 833.

The mere selection by the agent of the state of certain lands as being swamp lands does not, of itself, bring the lands so selected within the grant, but only amounts to a c

that they are of the description granted by this Act. Hence, when the secretary of the interior rejects the state selection, the lands included therein do not pass to the state, but may be sold by the United States. *Smith v. Hollis*, (1885) 46 Ark. 17; *Buena Vista County v. Iowa Falls, etc., R. Co.*, (1880) 55 Iowa 157, *affirmed* in (1884) 112 U. S. 165.

But when the selection made by the state officers is approved by the land department, the list evidencing such selection is *prima facie* evidence at least that the lands included therein were swamp lands, and passed to the state under the grant. *Page County v. Burlington, etc., R. Co.*, (1875) 40 Iowa 520. See also *Connors v. Meservey*, (1888) 76 Iowa 691.

And it has been held that where the selection was made in a proper manner and the list was sent to the general land office in due time and no action was taken thereon by the general land office, the list was *prima facie* evidence that the lands were swamp, as the nonaction of the federal officers should not be allowed to defeat the title of the state to lands to which it was entitled under this Act. *Snell v. Dubuque, etc., R. Co.*, (1889) 78 Iowa 88.

Effect of state's failure to make selection.—Where an officer appointed by the state to select and designate all the swamp and overflowed lands within a county failed to report particular land as swamp and overflowed, it was held that such failure was competent evidence that the land not reported was not swamp and overflowed. The basis of the decision was that it must be presumed that the state officer selected and reported all the swamp lands in accordance with his official duty; and it was said that after the lapse of thirty years the presumption would seem to be conclusive. *Kirby v. Lewis*, (1889) 39 Fed. Rep. 66.

Right of land department to resurvey before patent.—Though a survey has been made, and such survey indicates that certain land is swamp land and therefore passes under the statute to a state, it is within the power of the land department, at any time prior to the issuance of a patent, to order a resurvey of its own motion and thereby correct any mistakes in the former survey. *Michigan Land, etc., Co. v. Rust*, (1897) 168 U. S. 589.

Effect of state's acceptance of erroneous survey.—The effect of a state statute adopting the surveys on file in the surveyor-gen-

eral's office as the basis of adjustment is not to make an erroneous survey conclusive or to preclude the land department from the exercise of its unquestioned jurisdiction to correct surveys, but is simply to accept the field notes finally approved as the evidence of the lands passing under the grant, leaving to the land department the making of any needed corrections in the surveys and field notes. *Michigan Land, etc., Co. v. Rust*, (1897) 168 U. S. 589.

Acceptance of resurvey by state.—The action of a state in accepting a new and corrected survey as the basis of adjustment is tantamount to a waiver of any claims under the prior and erroneous survey. *Michigan Land, etc., Co. v. Rust*, (1897) 168 U. S. 589.

Power of state as to disposition of proceeds.—The appropriation of the proceeds arising from the sale of swamp lands rests solely in the good faith of the state. Its discretion in disposing of them is not controlled by the statute, as neither a contract nor a trust following the lands was thereby created. *Mills County v. Railroad Co.'s*, (1882) 107 U. S. 557; *Hagar v. Reclamation Dist. No. 108*, (1884) 111 U. S. 701; *U. S. v. Louisiana*, (1888) 127 U. S. 182. See also *American Emigrant Co. v. Adams County*, (1879) 100 U. S. 61; *Chandler v. Calumet, etc., Min. Co.*, (1888) 36 Fed. Rep. 665, *affirmed* (1893) 149 U. S. 79. See also *Gaston v. Stott*, (1873) 5 Oregon 48, holding that the trust raised by this section in regard to the application of the proceeds of sale is a matter of municipal and not judicial concern, over which the state has plenary and conclusive power; and that, therefore, the diversion of the proceeds from the purpose expressed in this section to those of aiding in the construction of certain works of internal improvement provided for by the state legislative assembly, did not operate to defeat the title of the state.

Who may complain of diversion of proceeds.—If a state applies to a purpose other than that indicated by this section the proceeds of swamp land which it has sold, only the United States may complain of the diversion. Even if the statute creates a contract, a private person who has purchased such lands from the state cannot complain of a breach on the part of the state, for the reason that he is not a party to the contract. *Hagar v. Reclamation Dist. No. 108*, (1884) 111 U. S. 701. See also *Mills County v. Railroad Co.'s*, (1882) 107 U. S. 557; *Barrett v. Brooks*, (1866) 21 Iowa 144.

Sec. 2481. [*Legal subdivisions mostly wet and unfit for cultivation.*] In making out lists and plats of the lands aforesaid all legal subdivisions, the greater part whereof is wet and unfit for cultivation, shall be included in said lists and plats, but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom. [*R. S.*]

Act of Sept. 28, 1850, ch. 84, § 9 Stat. L. 519.
Necessity of identification by secretary of interior.—While Congress by this section defined what it intended to grant as swamp and overflowed lands, it intrusted the identification of those lands to the secretary of the

interior, as appears from R. S. 2480. *Michigan Land, etc., Co. v. Rust*, (1897) 168 U. S. 589; *State v. Portsmouth Sav. Bank*, (1886) 106 Ind. 435.

Construction of term "legal subdivisions."—The term "legal subdivisions," as used in

this section, refers to the smallest subdivisions under the congressional system of surveys, that is, quarter quarter-sections or forty-acre lots. However, if a fractional quarter-section is subdivided, the subdivisions may be smaller than forty-acre lots and different in their form. If the greater portion of

such a subdivision was wet and uncultivation, it passed to the state under Act, but otherwise it did not. *Robin Forrest*, (1865) 29 Cal. 318; *Frederick Zumwalt*, (1901) 134 Cal. 44. See also *boom v. Ehrhardt*, (1881) 58 Cal. affirmed in (1885) 115 U. S. 67.

Sec. 2482. [*Indemnity to states where lands have been sold by U. States.*] Upon proof by the authorized agent of the State, before the Commissioner of the General Land-Office, that any of the lands purchased by person from the United States, prior to March 2d, 1855, were "swamp-lands within the true intent and meaning of the act entitled "An act to enable State of Arkansas and other States to reclaim the swamp-lands within limits," approved September twenty-eight, eighteen hundred and fifty, the chase-money shall be paid over to the State wherein said land is situate; when the lands have been located by warrant or scrip, the said State shall be authorized to locate a like quantity of any of the public lands subject to sale at one dollar and twenty-five cents per acre, or less, and patents shall issue therefor. The decision of the Commissioner of the General Land-Office shall be first approved by the Secretary of the Interior. [R. S.]

Act of March 2, 1855, ch. 147, 10 Stat. L. 634, 635.

Permanent appropriation to pay states. See R. S. sec. 3689 under ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 911.

This section inoperative to restrict original grant. — Since the Act of Sept. 28, 1850, ch. 84, was a grant *in presenti* to the states of the fee-simple title to all the unsold swamp and overflowed lands within their limits, no subsequent Act of Congress could diminish the estate or clog it with new conditions, or except from the operation of the grant any swamp and overflowed lands not originally excepted. A fee-simple estate passed to a grantee would not be affected by a subsequent unilateral act of his grantor. Hence, this section in no way affected the title acquired by virtue of the original Act. *Gaston v. Stott*, (1873) 5 Oregon 48.

Whether the lands falling within the terms of the grant had or had not vested in the state under the Act was a judicial question which Congress had no right to decide. *Branch v. Mitchell*, (1866) 24 Ark. 431.

Relinquishment of title by state. — Before the rights of third persons claiming under the state have attached to swamp and overflowed lands granted by the Swamp-land Act, it is competent for the state to agree that sales of such lands by the federal government subsequent to the passage of the Swamp-land Act shall be respected by the state, and that those claiming under the federal government shall be protected in their rights. *Michigan Land, etc., Co. v. Rust*, (C. C. A. 1895) 68 Fed. Rep. 155, affirmed (1897) 168 U. S. 589; *Kirby v. Lewis*, (1889) 39 Fed. Rep. 66; *Chism v. Price*, (1891) 54 Ark. 251; *Bruce v. Patton*, (1891) 54 Ark. 455; *Fredericks v. Zumwalt*, (1901) 134 Cal. 44; *Cook County v. Calumet, etc., Canal, etc., Co.*, (1890) 131 Ill. 505, writ of error dismissed (1891) 138 U. S. 635; *Dale v. Turner*, (1876) 34 Mich. 405; *Huggett v. Case*, (1886) 61 Mich. 480.

But the governor of a state has no right to relinquish to the federal government the claim of the state to lands under the Swamp-land Act, and a state after it has granted swamp lands to an individual cannot deprive the rights of its grantee by a relinquishment of its claims under the Swamp-land Act. *Matthews v. Goodrich*, (1885) 102 Ind. 100.

What constitutes relinquishment. — Although the state statute is ineffectual to confirm sales made by the United States, if the state is indemnified by the United States for sales made after the passage of the Act of Sept. 28, 1850, the release of the indemnity will be treated in equity as a sale of the lands by the state to the United States (provided no private rights previously attached), and the title thus acquired by the United States will inure to the benefit of the grantee. *Fletcher v. Pool*, (1859) 20 Ark. 100.

How. Stat. Mich., secs. 5384, 5385, authorizing the state treasurer to receive the proceeds of the sale of the swamp lands sold by it after the grant of such lands to the state in 1850, amounts to a waiver of the state's claim to all such lands as had been disposed of previously by the federal government. *Ives v. Ely*, (1885) 134 Mich. 569. See also *Dale v. Turner*, (1876) 34 Mich. 405. But this statute did not constitute a firm title to lands granted or disposed of by the federal government after its passage. *Sherman v. A. P. Cook Co.*, (1893) 134 Mich. 61.

The Missouri Swamp-land Act of 1868, ch. 72, secs. 24 and 25, did not constitute a relinquishment by the state of its title to swamp lands which had been sold by the United States, but only authorized the governor to relinquish the state's title to such lands at the request of the Court; and it did not amount to an acceptance of the indemnity provided for by the act, but simply authorized the registration of lands to collect the indemnity for a

land as might be relinquished by the governor at the request of the County Court. *Master-son v. Marshall*, (1877) 65 Mo. 94.

Act does not apply to railroad grants.—The Arkansas Act of Dec. 14, 1875, ratifying and confirming the title to swamp lands disposed of by the United States subsequent to Sept. 28, 1850, does not apply to lands granted by the United States in aid of railroads, but only to lands for which the United States would make indemnity to the state, namely, lands disposed of for cash, scrip, or warrants. *Chism v. Price*, (1891) 54 Ark. 251.

Sec. 2483. [*Patents to issue for swamp lands to purchasers and locators, prior to issuing of patents to states, etc.*] The President of the United States shall cause patents to be issued to the purchaser or purchasers, locator or locators, who made entries of the public lands claimed as swamp lands, either with cash or land-warrants, or scrip, or under any homestead or pre-emption laws prior to the issue of patents to the State or States: *Provided*, That in all cases where any State through its constituted authorities, may have sold or disposed of any tract or tracts of land prior to the entry sale or location of the same under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State through its constituted authorities, shall release its claim thereto in such form as shall be prescribed by the Secretary of the Interior. In all cases where such State did not within ninety days from the second day of March, 1855, the date of an act entitled, "An act for the relief of purchasers and locators of swamp and overflowed lands" through its constituted authorities, return to the General Land-Office of the United States, a list of all the lands sold as aforesaid, together with the dates of such sales and the names of the purchasers, the President shall issue patents to persons who made such entries of the public lands so claimed as swamp-land. [R. S.]

Act of March 2, 1855, ch. 147, 10 Stat. L. 634.

Sec. 2484. [*Selection of swamp and overflowed lands confirmed.*] All lands selected and reported to the General Land-Office as swamp and overflowed land by the several States entitled to the provisions of said act of Sept. 28, 1850, prior to March third, A. D. eighteen hundred and fifty-seven, are confirmed to said States respectively so far as the same remained vacant and unappropriated and not interfered with by an actual settlement under any law of the United States. [R. S.]

Act of March 3, 1857, ch. 117, 11 Stat. L. 251.

Purpose of this section.—The failure of the secretary of the interior to perform the duties imposed on him by R. S. 2480 became such a grievance that Congress deemed it necessary to provide a remedy by the passage of the Act on which this section is based. *Martin v. Marks*, (1877) 97 U. S. 345. See also *Chism v. Price*, (1891) 54 Ark. 251.

This section was unnecessary, since the Act of Sept. 28, 1850, vested a fee simple title in the states, so that the states might select for themselves, and if their title was questioned by the United States or by individuals they might claim of right that the matter should be determined by jury. *Gaston v. Stott*, (1873) 5 Oregon 48.

Limitation of action by state for indemnity.—The statute of limitations does not begin to run against an action in the Court of Claims by a state to recover from the United States moneys received from the sale of swamp lands until six years after the ascertainment of the amount due the state, by the making of proof of the sales by the authorized agent of the state before the commissioner of the general land office. *U. S. v. Louisiana*, (1887) 123 U. S. 32; *Louisiana v. U. S.*, (1887) 22 Ct. Cl. 284.

Confirmation of lands not identified by secretary.—By this section selections of swamp lands theretofore made by the states and reported to the commissioner of the land office were confirmed and made valid though they did not have the personal approval of the secretary of the interior. *Chism v. Price*, (1891) 54 Ark. 251; *Cramer v. Keller*, (1899) 98 Mo. 279.

Identification of lands originally granted.—The Act of Sept. 28, 1850, was a present grant subject to the identification of the specific parcels of lands coming within the describing Act; and the selection confirmed by the Act of March 3, 1857, furnished this identification, and perfected the title of the several states to the swamp and overflowed lands within their limits. *Martin v. Marks*,

(1877) 97 U. S. 345; *Tolleston Club v. State*, (1894) 141 Ind. 197.

Confirmation limited to land vacant and not appropriated.—It has been said that "this confirmatory Act applied only to lands that were vacant and not appropriated, and lands which had been sold by the United States, or entered with land warrants, before a patent issued to the state, are exempt from its operation." *Cramer v. Keller*, (1889) 98 Mo. 279.

But if by this it is meant that a grant by the United States of land actually swamp and overflowed, or an actual settlement on such land under a claim adverse to the swamp-land grant, after the passage of the Act of Sept. 8, 1850, and before the passage of this Act, defeated the rights of the swamp-land claimant, the decision is contrary to the clear weight of authority. See *supra*, notes to R. S. 2479, 2480. See also *Gaston v. Stott*, (1873) 5 Oregon 48.

Possibly, however, the case of *Cramer v. Keller*, (1889) 98 Mo. 279, refers to the purpose of the confirmatory Act, and not to its actual effect as construed by the courts.

Fraudulent or erroneous surveys not confirmed.—The purpose of this Act was not to oust the land department of its ordinary jurisdiction to inquire into and ascertain what were swamp and overflowed lands, but was to confirm and ratify the methods thus far pursued. But it cannot be supposed that Congress intended to condone frauds, to prevent the correction of errors or mistakes, or to take everything as it then appeared in the records of the land department, and, forbidding any further inquiry, declare that lands should be granted to the state when through error or fraud they appeared by the records to be swamp and overflowed. It would require very clear and direct language to justify a presumption that Congress intended to ignore the existence of frauds and errors and thereby enlarge the amount of a grant to a state. The language of this section does not compel any such conclusion as to the intent of Congress. *Michigan Land, etc., Co. v. Rust*, (1897) 168 U. S. 589. See also *Michigan Land, etc., Co. v. Pack*, (C. C. A. 1895) 68 Fed. Rep. 170; *Michigan v. Jackson, etc.*, R. Co. (C. C. A. 1895) 69 Fed. Rep. 116; *Keeran v. Allen*, (1867) 33 Cal. 548. Compare *Fremont County v. Burlington, etc., R. Co.*, (1867) 22 Iowa 91, *affirmed* (1869) 9 Wall. (U. S.) 89; *Montgomery County v. Burlington, etc., R. Co.*, (1874) 38 Iowa 208; *American Emigrant Co. v. Chicago, etc., R. Co.*, (1877) 47 Iowa 515, holding that this Act confirmed and vested in the several states the title to lands reported in the manner prescribed, though they were not in fact swamp and overflowed lands, provided they were vacant and had not been actually settled on adversely to the swamp-land claim prior to the passage of the Act.

Confirmation of selection of submerged land.—Where, from the facts of the case, a presumption arose that a selection made by the state of Indiana included land submerged at the time of the selection and of

the patent issued by the United States, as well as the upland bordering on non-navigable water, it was held that this section operated to confirm such selection. *Kean v. Calumet Canal, etc., Co.*, (1903) 190 U. S. 452, *White and McKenna, JJ., dissenting*.

Cash indemnity to states for swamp lands sold.—The secretary of the interior is warranted in approving statements of account between the United States and the state, made by the commissioner of the general land office, for cash indemnity for swamp lands sold during the period intervening between the passage of the Swamp-land Act, Sept. 28, 1850, and March 3, 1857. (1885) 18 Op. Atty-Gen. 170. See also (1866) 11 Op. Atty-Gen. 467.

And this, too, though this section omits that part of the Act of March 3, 1857, which granted the indemnity, as the right to indemnity under that Act for swamp lands so disposed of is a right "accrued" to those states in which such lands are situated prior to the adoption of the Revised Statutes, and is therefore saved by R. S. 5597 from being affected by the repeal of the omitted indemnity provision under the operation of R. S. 5596. (1887) 15 Op. Atty-Gen. 340.

And the state of Louisiana is entitled to indemnity for any swamp lands granted to it by the Act of March 2, 1849, ch. 87, which were sold by the United States between the date of that Act and Sept. 28, 1850. But as to such swamp lands as were excepted out of the grant made by the said Act of 1849 (namely, "lands fronting on rivers, creeks, bayous, watercourses," etc.) and as were first granted to that state by the Act of Sept. 28, 1850, ch. 84, it is entitled to indemnity only for those sold by the United States after Sept. 28, 1850. (1887) 18 Op. Atty-Gen. 522.

Manner in which indemnity is made.—A state is entitled to the purchase money of swamp lands in her limits sold by the United States for cash after Sept. 28, 1850, and prior to the passage of the Act of March 3, 1857, and she is also entitled to indemnity in land for such swamp lands as were located with warrants or scrip between such dates. (1866) 11 Op. Atty-Gen. 467.

No indemnity for sales subsequent to passage of this Act.—(1866) 11 Op. Atty-Gen. 467.

Lands granted Florida for school purposes.—This Act does not apply to or embrace the sixteenth section granted to the state of Florida for school purposes by the Act of March 3, 1845, ch. 48, 5 Stat. L. 742. *State v. Jennings*, (Fla. 1903) 35 So. Rep. 986.

Subsequent grant by Congress void.—After the passage of this Act the United States government had no power to set aside the selection confirmed by the Act, and convey the land covered by the selection to a person claiming adversely to the swamp-land claim, unless it was found that the lands were not vacant or unappropriated at the time of the passage of the Act. *Martin v. Marks*, (1877) 97 U. S. 346.

Secs. 2485, 2486, 2487. [*Certain lands selected by California confirmed to that state. See infra, XIX. Miscellaneous Provisions Relating to the Public Lands.*]

Sec. 2488. [*Swamp and overflowed lands to be certified to state within one year, in certain cases.*] It shall be the duty of the Commissioner of the General Land-Office, to certify over to the State of California as swamp and overflowed lands, all the lands represented as such upon the approved township surveys and plats, whether made before or after the 23d day of July, 1866, under the authority of the United States.

The surveyor-general of the United States for California, shall under the direction of the Commissioner of the General Land-Office, examine the segregation maps and surveys of the swamp and overflowed lands, made by said State; and where he shall find them to conform to the system of surveys adopted by the United States, he shall construct and approve township plats accordingly, and forward to the General Land-Office for approval.

In segregating large bodies of land, notoriously and obviously swamp and overflowed, it shall not be necessary to subdivide the same, but to run the exterior lines of such body of land.

In case such State surveys are found not to be in accordance with the system of United States surveys, and in such other townships as no survey has been made by the United States, the Commissioner shall direct the surveyor-general, to make segregation surveys, upon application to the surveyor-general, by the governor of said State, within one year of such application, of all the swamp and overflowed land in such townships, and to report the same to the General Land-Office, representing and describing what land was swamp and overflowed, under the grant, according to the best evidence he can obtain.

If the authorities of said State, shall claim as swamp and overflowed, any land not represented as such upon the map or in the returns of the surveyors, the character of such land at the date of the grant September twenty-eight, eighteen hundred and fifty, and the right to the same shall be determined by testimony, to be taken before the surveyor-general, who shall decide the same, subject to the approval of the Commissioner of the General Land-Office. [R. S.]

Act of July 23, 1866, ch. 219, 14 Stat. L. 219.

Purpose and effect of this Act.—This Act tended to remove the existing uncertainty and confusion as to land titles in California, principally by recognizing the action of the state in disposing of the lands granted to her, in cases where such disposition was made in good faith and did not interfere with previously acquired interests, and by providing a mode for identifying the swamp and overflowed lands in the future without the action of the secretary of the interior. It no longer left the identification to the secretary, but provided for identification by the joint action of the state and federal authorities. *Wright v. Roseberry*, (1887) 121 U. S. 488, *reversing* (1883) 63 Cal. 252; *Tubbs v. Wilhoit*, (1891) 138 U. S. 134; *Heath v. Wallace*, (1891) 138 U. S. 573, *affirming* (1886) 71 Cal. 50; *McCabe v. Goodwin*, (1895) 106 Cal. 486.

A homestead entry after the passage of this Act on land the title to which was confirmed thereby was invalid as against a swamp-land claimant. *Tubbs v. Wilhoit*, (1891) 138 U. S. 134.

Section applies only to lands actually swamp and overflowed.—*Sacramento Sav. Bank v. Hynes*, (1875) 50 Cal. 195. See also *Sutton v. Fassett*, (1875) 51 Cal. 12.

Certification of lands not covered by Act.—The action of the commissioner of the general land office in certifying to the state lands to which this Act does not apply transfers no title. *Sutton v. Fassett*, (1875) 51 Cal. 12.

"Lands subject to periodical overflow" are not "swamp and overflowed lands" within the meaning of this section. *Heath v. Wallace*, (1891) 138 U. S. 573, *affirming* (1886) 71 Cal. 50.

Effect of failure to have character of land determined.—Where land surveyed in 1869 was patented by the United States in 1882 to a purchaser from a Mexican grantee, and no steps had been taken by the governor or by the state authorities to have the character of the land determined, and it did not appear that a person claiming the land in controversy under a swamp-land certificate of purchase from the state issued in 1856 had ever taken any steps to have the governor or state authorities move in the manner, it was

held that the delay in having the character of the land determined, though not conclusive, was persuasive that the land was never

of the character described by the Swamp Land Act as swamp and overflowed. *Shaw v. McNamara*, (1891) 87 Cal. 371.

Sec. 2489. [*List of lands selected to be sent to General Land Office.*] shall be the duty of the Commissioner of the General Land-Office, to require the officers of the local land-offices in said State (in case the same has not already been done) and the surveyor-general immediately to forward lists of selections made by the State hereinbefore specified and lists and maps of swamp and overflowed lands, claimed by said State or surveyed as provided in the ten preceding sections, for final disposition and determination, which disposition shall be made by the Commissioner of the General Land-Office without delay. [*R. S.*]

Act of July 23, 1866, ch. 219, 14 Stat. L. 220.

Sec. 2490. [*Act of Sept. 28, 1850, ch. 84, extended to Minnesota and Oregon.*] The provisions of the act of Congress entitled "An act to enable the State of Arkansas and other States to redeem" the swamp lands within the limits, approved September 28, A. D. 1850, extend to the States of Minnesota and Oregon: *Provided*, That the grant shall not include any lands which the Government of the United States may have sold or disposed of under any act enacted prior to March 12, 1860, prior to the confirmation of title to be made under the authority of said act — and the selections to be made from lands already surveyed in each of the States last named, under the authority of the act aforesaid, shall have been made within two years from the adjournment of the legislature of each State, at its next session after the 12th day of March, A. D. 1860 — and as to all lands surveyed or to be surveyed, thereafter, within two years from such adjournment, at the next session after notice by the Secretary of the Interior to the governor of the State, that the surveys have been completed and confirmed. [*R. S.*]

Act of March 12, 1860, ch. 5, 12 Stat. L. 3.

Selection within time limited is condition precedent. — The purpose and effect of the provision limiting the time within which the selections must be made are to devolve on the state the duty of making the selections in the first instance, whereupon it becomes the duty of the secretary of the interior to ascertain whether the lands included in such selections are "wet and unfit for cultivation" within the meaning and terms of the Act. But if the selection is not made within the time prescribed, the grant reverts to the United States. The selection within the time limited is a condition precedent. *Pengra v. Munz*, (1887) 29 Fed. Rep. 830. *Contra*, *Gaston v. Stott*, (1873) 5 Oregon 48, holding that the provision is merely directory and that the state of Oregon lost no rights by not complying strictly therewith.

Exception of land sold before confirmation

is inoperative. — Since the grant is in fee-simple title, no confirmation of title is necessary. Hence the exception of lands which the government of the United States may have reserved, sold, or disposed of (in pursuance of any law theretofore enacted) prior to the confirmation of title to be made under the authority of the Act is repugnant to the purview of the act and cannot stand. Thus, one who claims swamp land under a purchase from the state of Oregon, after the passage of this act, is entitled to the land as against a person claiming under a subsequent entry under pre-emption laws, though the title to the land was never confirmed to the state. *Ton v. Stott*, (1873) 5 Oregon 48.

The right of the state of Minnesota to swamp lands depends wholly upon this act. — *Rice v. Sioux City, etc., R. Co.*, (1891) 110 U. S. 695.

An act for the relief of actual settlers on lands claimed to be swamp and overflowed lands in the State of Missouri.

[*Act of Feb. 23, 1875, ch. 99, 18 Stat. L. 334.*]

[*Purchasers of lands in Missouri as swamp lands to have priority of right to homestead if lands not in fact swamp.*] That in all cases in the State of Missouri where lands have heretofore been selected and claimed as swamp

overflowed lands by said State, and the various counties therein, by virtue of any act of Congress, and said lands have been withheld from market in consequence thereof by the General Government, and the said State and counties have sold said lands to actual settlers, and said settlers have improved the same to the value of one hundred dollars; said settlers, their heirs, assigns, and legal representatives, who have continued to reside thereon, shall have priority of right to preëempt or homestead all such lands as may be rejected by the United States as not being in fact swamp and overflowed lands; and it shall be the duty of the Secretary of the Interior to make such rules and regulations as may be necessary to carry into effect the provisions of this act: *Provided*, That nothing herein contained shall prejudice the rights of any person who may have made actual settlement upon such lands under the preemption or homestead laws prior to the passage of this act. [18 Stat. L. 334.]

An act granting to the State of Missouri all lands therein selected as swamp and overflowed lands.

[Act of March 3, 1877, ch. 116, 19 Stat. L. 395.]

[*Lands in Missouri selected as swamp and overflowed lands granted to State.*] That all lands in the State of Missouri selected as swamp and overflowed lands, and regularly reported as such to the General Land Office, and now withheld from market as such, so far as the same remain vacant and unappropriated and not interfered with by any preemption, homestead, or other claim under any law of the United States, and the claim whereto has not been heretofore rejected by the Commissioner of the General Land Office, or other competent authority, be, and the same are hereby, confirmed to said State, and all title thereto vested in said State; and it is hereby made the duty of the Secretary of the Interior to cause patents to issue for the same. [19 Stat. L. 395.]

An Act To enable certain persons in the State of Mississippi to procure title to public lands.

[Act of Feb. 17, 1897, ch. 241, 29 Stat. L. 534.]

[SEC. 1.] [*Preference of purchasers from Mississippi of swamp lands on grant to Mobile and Ohio Railroad.*] That all persons who, prior to January nineteenth, eighteen hundred and ninety-five, purchased in good faith from the State of Mississippi any lands within the six miles or granted limits of the Mobile and Ohio Railroad, and which lands were included in approved swamp-land list numbered seven, Augusta series, their heirs or assigns, shall have the preference right for one year from the passage of this Act to enter under the homestead laws of the United States not exceeding one hundred and sixty acres of the lands so purchased by them from the State of Mississippi and to purchase not exceeding one hundred and sixty acres additional of such lands at one dollar and twenty-five cents per acre, or, if they elect not to avail themselves of the homestead law, to purchase three hundred and twenty acres of such land: *Provided, however*, That this Act shall not affect the rights of homestead claimants who, between the sixteenth day of February, eighteen hundred and ninety-five, and the twenty-seventh day of May, eighteen hundred and ninety-six, made settlements and entries or filed with the local land officers applications to enter in good faith, under the homestead laws, any of the lands included in the provisions of this Act not occupied or actually and substantially improved by such purchasers from the State. [29 Stat. L. 534.]

SEC. 2. [*Purchasers at tax sales.*] That all persons who have legally chased any of the lands aforesaid at tax sales shall be considered assigns v the meaning of this Act. [29 Stat. L. 534.]

SEC. 3. [*Title of purchasers of unconfirmed swamp lands in Arkansas confirmed.*] That the title of all persons who have purchased from the St Arkansas any unconfirmed swamp land and hold deeds for the same b the same is hereby, confirmed and made valid as against any claim or of the United States, and without the payment by said persons, their h assigns, of any sum whatever to the United States or to the State of Ark [30 Stat. L. 368.]

This and section 4 following are from the Act of April 29, 1898, ch. 229, "An Act to approve a compromise and settlement between the United States and the State of

Arkansas." Sections 1 and 2 rel the approval of the terms of the comp and the amounts paid thereon.

SEC. 4. [*Relinquishment by Arkansas of certain public lands — title grantees confirmed.*] That the State of Arkansas does hereby relinquish quitclaim to the United States all lands heretofore confirmed, certified patented to the State which have been entered under the public land and does hereby cede, relinquish, and quitclaim to the United States all title, and interest under the Acts of September twenty-eighth, eighteen h and fifty, March second, eighteen hundred and fifty-five, and March eighteen hundred and fifty-seven, in and to all lands in the State which been heretofore granted, confirmed, certified, or patented by the United under any other Acts, and the title to such lands is hereby confirmed grantees, their heirs, successors, or assigns, anything in this Act or any Act to the contrary notwithstanding: *Provided*, That this Act shall be force or effect until the State of Arkansas shall have accepted and ap the conditions, limitations, and provisions herein contained by an act general assembly or by an instrument in writing duly executed by the go under the authority conferred upon him by the legislature of said Stat filed with the Secretary of the Treasury and the Secretary of the Interior one year from the approval of this Act: *Provided further*, That where general assembly of the State of Arkansas did, on the tenth day of 1 eighteen hundred and ninety-seven, accept and approve the conditions, tions, and provisions herein contained before the passage of this Act, n the same effective and conclusive, therefore this Act shall be in full for effect from and after its passage. [30 Stat. L. 368.]

See note to section 3, *supra*.

[XIII. LANDS IN OKLAHOMA.]

SEC. 18. [*Lands subject to settlement — school and missionary lands served — restrictions as to railroads.*] * * * All the lands embr that portion of the Territory of Oklahoma heretofore known as the Land Strip, shall be open to settlement under the provisions of the hom laws of the United States, except section twenty-three hundred and one

Revised Statutes, which shall not apply; but all actual and bona fide settlers upon and occupants of the lands in said Public Land Strip at the time of the passage of this act shall be entitled to have preference to and hold the lands upon which they have settled under the homestead laws of the United States, by virtue of their settlement and occupancy of said lands, and they shall be credited with the time they have actually occupied their homesteads, respectively, not exceeding two years, on the time required under said laws to perfect title as homestead settlers.

The lands within said Territory of Oklahoma, acquired by cession of the Muscogee (or Creek) Nation of Indians, confirmed by act of Congress approved March first, eighteen hundred and eighty-nine, and also the lands acquired in pursuance of an agreement with the Seminole Nation of Indians by re-lease and conveyance, dated March sixteenth, eighteen hundred and eighty-nine, which may hereafter be open to settlement, shall be disposed of under the provisions of sections twelve, thirteen, and fourteen of the "Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes," approved March second, eighteen hundred and eighty-nine, and under section two of an "Act to ratify and confirm an agreement with the Muscogee (or Creek) Nation of Indians in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine: *Provided, however*, That each settler under and in accordance with the provisions of said acts shall, before receiving a patent for his homestead on the land hereafter opened to settlement as aforesaid, pay to the United States for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and twenty-five cents per acre.

Whenever any of the other lands within the Territory of Oklahoma, now occupied by any Indian tribe, shall by operation of law or proclamation of the President of the United States, be open to settlement, they shall be disposed of to actual settlers only, under the provisions of the homestead law, except section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply: *Provided, however*, That each settler, under and in accordance with the provisions of said homestead laws, shall before receiving a patent for his homestead pay to the United States for the land so taken by him, in addition to the fees provided by law, a sum per acre equal to the amount which has been or may be paid by the United States to obtain a relinquishment of the Indian title or interest therein, but in no case shall such payment be less than one dollar and twenty-five cents per acre. The rights of honorably discharged soldiers and sailors in the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to such payment. All tracts of land in Oklahoma Territory which have been set apart for school purposes, to educational societies, or missionary boards at work among the Indians, shall not be open for settlement, but are hereby granted to the respective educational societies or missionary boards for whose use the same has been set apart. No part of the land embraced within the Territory hereby created shall inure to the use or benefit of any railroad corporation, except the rights of way and land for stations heretofore granted to certain railroad corporations. Nor shall any provision of this act or any act of any officer of the United States, done or performed under the provisions of this act or otherwise, invest any corporation owning or operating any railroad in the Indian Territory, or Territory created by

this act, with any land or right to any land in either of said Territories, and this act shall not apply to or affect any land which, upon any condition becoming a part of the public domain, would inure to the benefit of, or become the property of, any railroad corporation. [26 Stat. L. 90.]

This and sections 20, 21, 24, 27 following are from the Act of May 2, 1890, ch. 182, "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States

Court in the Indian Territory, and for other purposes."

The omitted part of the above section relates to school lands. See *infra*, div. 3.

SEC. 20. [Procedure under homestead laws — selections in square form soldiers' and sailors' homesteads.] That the procedure in applications, entries, contests, and adjudications in the Territory of Oklahoma shall be in form and manner prescribed under the homestead laws of the United States, and the general principles and provisions of the homestead laws, except as modified by the provisions of this act and the acts of Congress approved March first and second, eighteen hundred and eighty-nine, heretofore mentioned, shall be applicable to all entries made in said Territory, but no patent shall be issued to any person who is not a citizen of the United States at the time of making final proof.

All persons who shall settle on land in said Territory, under the provisions of the homestead laws of the United States, and of this act, shall be required to select the same in square form as nearly as may be; and no person who shall at the time be seized in fee simple of a hundred and sixty acres of land in said State or Territory, shall hereafter be entitled to enter land in said Territory of Oklahoma. The provisions of sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall, except so far as modified by this act, apply to all homestead settlements in said Territory. [26 Stat. L. 91.]

See note to section 18, *supra*.

The Acts herein referred to are the following:

Act of March 1, 1889, 25 Stat. L. 757, in relation to the cession of lands of the Muscogee (or Creek) Nation of Indians, section 2 of which provides as follows:

"SEC. 2. That the lands acquired by the United States under said agreement shall be a part of the public domain, but they shall only be disposed of in accordance with the laws regulating homestead entries, and to the persons qualified to make such homestead entries, not exceeding one hundred and sixty acres to one qualified claimant. And the provisions of section twenty-three hundred and one of the Revised Statutes of the United States shall not apply to any lands acquired under said agreement. Any person who may enter upon any part of said lands in said agreement mentioned prior to the time that the same are opened to settlement by Act of Congress shall not be permitted to occupy or to make entry of such lands or lay any claim thereto." [25 Stat. L. 759.]

Act of March 2, 1889, ch. 412, 25 Stat. L. 1005, relating to the cession of lands of the Seminole and Cherokee Indians, sections 13 and 14 of which provide as follows:

"SEC. 13. That the lands acquired by the United States under said agreement shall be a part of the public domain, to be disposed of only as herein provided, and sections sixteenth and thirty-six of each township,

whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools, to be established within the limits of said lands under such conditions and regulations as may be hereafter enacted by Congress.

"That the lands acquired by conveyance from the Seminole Indians hereunder, except the sixteenth and thirty-sixth sections shall be disposed of to actual settlers under homestead laws only, except as herein otherwise provided (except that section two thousand three hundred and one of the Revised Statutes shall not apply): And provided further, That any person who, having attempted to, but for any cause, failed to secure a homestead in fee to a homestead under existing laws who made entry under what is known as the commuted provision of the homestead laws shall be qualified to make a homestead entry upon said lands: And provided further, That the rights of honorably discharged Union soldiers and sailors in the late Civil War as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged: And provided further, That no entry shall be in square form as nearly as practicable and no person be permitted to enter more than one-quarter section thereof but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this

vision shall ever be permitted to enter any of said lands or acquire any right thereto.

"The Secretary of the Interior may, after said proclamation and not before, permit entry of said lands for town-sites, under sections twenty-three hundred and eighty-seven and twenty-three hundred and eighty-eight of the Revised Statutes, but no such entry shall embrace more than one-half section of land.

"That all the fore[oi]ng provisions with reference to lands to be acquired from the Seminole Indians including the provisions pertaining to forfeiture shall apply to and regulate the disposal of the lands acquired from the Muscogee or Creek Indians by articles of cession and agreement made and concluded at the city of Washington on the nineteenth day of January in the year of our Lord eighteen hundred and eighty-nine." [25 Stat. L. 1005.]

"SEC. 14. The President is hereby authorized to appoint three Commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory for the cession to the United States of all their title, claim or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at its next session and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same for ratification, and for this purpose the sum of twenty-five thousand dollars, or as much thereof as may be necessary, is hereby appropriated to be immediately available: *Provided*, That said Commission is further authorized to submit to the Cherokee nation the proposition that said nation shall cede to the United States in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date, January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress; and if said Cherokee nation shall accept, and by Act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain, for the purpose of such disposition as is herein provided, and the President is authorized as soon thereafter as he may deem advisable, by proclamation open said lands to settlement in the same manner and to the same effect, as in this act provided concerning the lands acquired from said Creek Indians, but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto." [25 Stat. L. 1005.]

Procedure in land contests. — "This section goes further than to make the homestead laws applicable, but adopts and puts in force

the procedure in contests then in force as well as the general provisions and principles of the homestead laws." *Peters v. U. S.*, (1894) 2 Okla. 116, 125.

Presence in prohibited territory at time of opening. — Under the statute and the proclamation of the President for the opening up for settlement of lands in Oklahoma, any person who was within the prohibited territory at the time the land was opened by law for settlement was precluded from entering a homestead therein. Thus a railroad section hand residing with his family on a railroad right of way within the territory, who, by reason of his employment and residence, was within the prohibited territory at the time of the opening, was disqualified to make a homestead entry. *Smith v. Townsend*, (1893) 148 U. S. 490, *affirming* (1892) 1 Okla. 117.

And so was a deputy marshal of the United States who was within the prohibited territory in the performance of his official duties. *Payne v. Robertson*, (1898) 169 U. S. 323, *affirming* *Payne v. Foster*, (Okla. 1893) 33 Pac. Rep. 424.

The provision with regard to honorably discharged Union sailors and soldiers was intended only to give them an equal right with others to acquire a homestead within the territory, and in no way operated to relieve them from the general restriction as to going into the territory. *Calhoun v. Violet*, (1899) 173 U. S. 60, *affirming* (1896) 4 Okla. 321.

But one who was within the Osage Indian or the Ponca Indian reservation before the hour of twelve o'clock noon (central standard time) of Sept. 16, 1893, and made the race from said reservation into the part of the Cherokee Outlet opened to settlement on that day, was not by reason thereof disqualified from settling, filing homestead entry upon, and acquiring title to a quarter-section of land within the country then declared open to settlement. *McClung v. Penny*, (1902) 12 Okla. 303; *Winebrenner v. Forney*, (1902) 11 Okla. 665, *affirmed* (1903) 189 U. S. 148.

It has been established by the rulings of the land department that one who took part in the race for land on the day of the opening was not prohibited from taking land because of a prior entry into the territory, unless it is shown that manifest advantage resulted to the entryman from his previous presence in the territory. *Potter v. Hall*, (1903) 189 U. S. 292, *reversing* (1901) 11 Okla. 173.

Compare *Patterson v. Wilson*, (1901) 11 Okla. 75, holding that a person who makes the race is disqualified from making a homestead entry, if he was within the territory prior to the opening and subsequent to the Act providing for the opening. In that case the court considered that the claimant had gained a decided advantage by his presence in the territory during the prohibited period, but expressly disapproved of the doctrine of advantage, and based its decision on the broad ground that there was no exception to the rule prohibiting persons who were within the territory before the opening from making a homestead entry.

SEC. 21. [*Homestead locations and entries — patents.*] That any person, entitled by law to take a homestead in said Territory of Oklahoma, who has already located and filed upon, or shall hereafter locate and file upon, a homestead within the limits described in the President's proclamation of April first, eighteen hundred and eighty nine, and under and in pursuance of the laws applicable to the settlement of the lands opened for settlement by such proclamation, and who has complied with all the laws relating to such homestead settlement, may receive a patent therefor at the expiration of twelve months from date of locating upon said homestead upon payment to the United States of one dollar and twenty-five cents per acre for land embraced in such homestead. [26 Stat. L. 91.]

See note to section 18, *supra*.

SEC. 24. [*Fraudulent settlement void — penalty.*] That it shall be unlawful for any person, for himself or any company, association, or corporation, to directly or indirectly procure any person to settle upon any lands open to settlement in the Territory of Oklahoma, with intent thereafter of acquiring title thereto; and any title thus acquired shall be void; and the parties to such fraudulent settlement shall severally be guilty of a misdemeanor, and shall be punished upon indictment, by imprisonment not exceeding twelve months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court. [26 Stat. L. 92.]

See note to section 18, *supra*.

SEC. 27. [*Rights of occupants not impaired.*] That the provisions of this act shall not be so construed as to invalidate or impair any legal claims or rights of persons occupying any portion of said Territory, under the laws of the United States, but such claims shall be adjudicated by the Land Department, or the courts, in accordance with their respective jurisdictions. [26 Stat. L. 93.]

See note to section 18, *supra*.

SEC. 16. [*Ceded Indian lands open to homestead and town-site entries — all lands in Oklahoma declared agricultural.*] That whenever any of the lands acquired by either of the three foregoing agreements respecting lands in the Indian or Oklahoma Territory shall by operation of law or proclamation of the President of the United States be open to settlement they shall be disposed of to actual settlers only, under the provisions of the homestead and town site laws (except section twenty-three hundred and one of the Revised Stat[ut]es of the United States which shall not apply): *Provided, however,* That each settler, on said lands shall before making a final proof and receiving a certificate of entry, pay to the United States for the land so taken by him, in addition to the fees provided by law, and within five years from the date of the first original entry, the sum of one dollar and fifty cents per acre, one-half of which shall be paid within two years; but the rights of honorably discharged Union soldiers and sailors as defined and described in Sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall not be abridged except as to the sum to be paid as aforesaid, and all the lands in Oklahoma are hereby declared to be agricultural lands, and proof of their non-mineral character shall not be required as a condition precedent to final entry [26 Stat. L. 1026.]

This and sections 17-36 following are from the Indian Department Appropriation Act of March 3, 1891, ch. 543. The "foregoing agreements" referred to in the section are

the agreements for the cession of lands of the Pottawatomie, Absentee Shawnee, and Cheyenne and Arapahoe Indians.

Town-site entries. — See *supra*, p. 355.

SEC. 17. [*Division into counties — county seats — jurisdiction of courts.*]

That before any lands in Oklahoma are open to settlement it shall be the duty of the Secretary of the Interior to divide the same into counties which shall contain as near as possible not less than nine hundred square miles in each county. In establishing said county line the Secretary is hereby authorized to extend the lines of the counties already located so as to make the area of said counties equal, as near as may be, to the area of the counties provided for in this act. At the first election for county officers the people of each county may vote for a name for each county, and the name which receives the greatest number of votes shall be the name of such county: *Provided, further*, That as soon as the county lines are designated by the Secretary, he shall reserve not to exceed one-half section of land in each county to be located near the center of said county, for county seat purposes to be entered under sections twenty-three hundred and eighty-seven and twenty-three and eighty-eight of the Revised Statutes: *Provided*, That in addition to the jurisdiction granted to the probate courts and the judges thereof in Oklahoma Territory by Legislative enactments which enactments are hereby ratified, the Probate Judges of said Territory are hereby granted such jurisdiction in town site matters and under such regulations as are provided by the laws of the State of Kansas. [26 Stat. L. 1026.]

This section, with the exception of the concluding proviso, is repeated verbatim in section 37, except that the area of the counties is fixed at "not less than seven hundred" instead of "not less than nine hundred" square miles each.

Ratification of Oklahoma statutes. — The provision of this section ratifying the Oklahoma statutes in regard to the jurisdiction of probate courts and of the judges thereof has the effect of giving the Acts of the territorial legislature the same force and effect as if they were themselves congressional enactments. *Finch v. U. S.*, (1893) 1 Okla. 396; *Wetz v. Elliott*, (1896) 4 Okla. 618.

And if the law was one which the legislature of Oklahoma had no power to pass,

the Act of Congress ratifying it gave it all the vitality it would have had if it had first found expression in Congress. *Finch v. U. S.*, (1893) 1 Okla. 396.

Jurisdiction of probate judges. — By this section Congress intended to repudiate the Oklahoma Act of Dec. 2, 1890 (Oklahoma Stat. 1893, p. 1145), and to adopt for the government of probate judges, in town-site matters in Oklahoma, the laws of the State of Kansas, by giving to said judges "such jurisdiction in town-site matters and under such regulations as are provided by the laws of the State of Kansas." The effect is to exclude any other jurisdiction in such matters, or any other regulations. *Brown v. Parker*, (1894) 2 Okla. 258.

SEC. 18. [*School lands. See infra, div. XVI.*]

SECS. 19-35. [*Special.*]

These sections provide for opening certain lands of the Cœur d'Alene, Arickaree, Gros Ventre, Mandan, Sisseton, and Wahpeton

Sioux, and Crow Indians, in Washington, Idaho, Montana, and North and South Dakota, to settlement.

SEC. 36. [*Lease of school lands. See infra, div. XVI.*]

SEC. 37. [*Same as section 17.*]

This section is the same as section 17, except that the area of the counties is fixed at "not less than seven hundred" instead of

"not less than nine hundred" square miles each, and the last proviso of that section is omitted.

An Act Granting settlers on certain lands in Oklahoma Territory the right to commute their homestead entries, and for other purposes.

[Act of Oct. 20, 1893, ch. 5, 28 Stat. L. 3.]

[SEC. 1.] [*Homesteaders granted extension of time to make first payment.*] That the homestead settlers on the Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe Indian lands, in Oklahoma Territory be, and they are hereby, granted an extension of one year within which to make the first payment provided for in section sixteen of the act of Congress approved March third, eighteen hundred and ninety-one, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and ninety-two, and for other purposes," and such payment may be made at any time within three years from the date of the entry of such lands. [28 Stat. L. 3.]

The cession of lands by the Absentee Shawnee Indians is contained in section 9 of the Act of March 3, 1891, ch. 543, 26 Stat. L. 1018.

The cession of lands by the Pottawatomie

Indians is contained in section 8 of the Act of March 3, 1891, ch. 543, 26 Stat. L. 1016.

The cession of lands by the Cheyenne and Arapahoe Indians is contained in section 13 of the Act of March 3, 1891, ch. 543, 26 Stat. L. 1022.

SEC. 2. [*Issuance of patent.*] That any person entitled by law to take a homestead in said Territory of Oklahoma who has already located and filed upon, or who shall hereafter locate and file upon a homestead within any of the lands in the Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe Indian lands and the Public Land Strip in Oklahoma Territory, and who has complied with all the laws relating to such homestead settlement, may receive a patent therefor at the expiration of twelve months from the date of locating upon such homestead, upon payment to the United States of one dollar and fifty cents per acre for the land embodied in such homestead: *Provided*, That homestead settlers in the Public Land Strip now Beaver County, Oklahoma, may receive such patent upon the payment to the United States of the sum of one dollar and twenty-five cents per acre. [28 Stat. L. 3.]

SEC. 3. [*Repeal.*] That all acts in conflict with this act are hereby repealed. [28 Stat. L. 3.]

[SEC. 1.] [*Homesteaders granted extension of time to make first payment.*]
* * * That the homestead settlers on the Absentee Shawnee, Pottawatomie, and Cheyenne and Arapahoe Indian lands in Oklahoma Territory be, and they are hereby, granted an extension of one year within which to make the first payment provided for in section sixteen of the Act of Congress approved March third, eighteen hundred and ninety-one, entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and ninety-two, and for other purposes," and such payment may be made at any time within five years from the date of the entry of such lands. And that the like extension of one year on the first payment required to be made, when payable in installments, is hereby granted to all homestead settlers on and purchasers of all ceded Indian reservations in the

States of North Dakota, South Dakota, Nebraska, Montana, and Idaho.
* * * [28 Stat. L. 901.]

This is from the Indian Appropriation Act
of March 2, 1895, ch. 188.

See further Acts of June 10, 1896, ch. 398,

sec. 1, and June 7, 1897, ch. 3, sec. 1, grant-
ing extensions as to ceded Indian lands,
supra, pp. 312, 313.

An Act To provide for the entry of lands in Greer County, Oklahoma, to give preference rights to settlers, and for other purposes.

[Act of Jan. 18, 1897, ch. 62, 29 Stat. L. 490.]

[SEC. 1.] [*Homestead settlers in Greer county — preference right — additional lands — members of family — death of settler — improvements.*] That every person qualified under the homestead laws of the United States, who, on March sixteenth, eighteen hundred and ninety-six, was a bona fide occupant of land within the territory established as Greer County, Oklahoma, shall be entitled to continue his occupation of such land with improvements thereon, not exceeding one hundred and sixty acres, and shall be allowed six months preference right from the passage of this Act within which to initiate his claim thereto, and shall be entitled to perfect title thereto under the provisions of the homestead law, upon payment of land office fees only, at the expiration of five years from the date of entry, except that such person shall receive credit for all time during which he or those under whom he claims shall have continuously occupied the same prior to March sixteenth, eighteen hundred and ninety-six. Every such person shall also have the right, for six months prior to all other persons, to purchase at one dollar an acre, in five equal annual payments, any additional land of which he was in actual possession on March sixteenth, eighteen hundred and ninety-six, not exceeding one hundred and sixty acres, which, prior to said date, shall have been cultivated, purchased, or improved by him. When any person entitled to a homestead or additional land, as above provided, is the head of a family, and though still living, shall not take such homestead or additional land, within six months from the passage of this Act, any member of such family over the age of twenty-one years, other than husband or wife, shall succeed to the right to take such homestead or additional land for three months longer, and any such member of the family shall also have the right to take, as before provided, any excess of additional land actually cultivated or improved prior to March sixteenth, eighteen hundred and ninety-six above the amount to which such head of the family is entitled, not to exceed one hundred and sixty acres to any one person thus taking as a member of such family. In case of the death of any settler who actually established residence and made improvement on land in said Greer County prior to March sixteenth, eighteen hundred and ninety-six, the entry shall be treated as having accrued at the time the residence was established, and sections twenty-two hundred and ninety-one and twenty-two hundred and ninety-two of the Revised Statutes shall be applicable thereto. Any person entitled to such homestead or additional land shall have the right prior to January first, eighteen hundred and ninety-seven, from the passage of this Act to remove all crops and improvements he may have on land not taken by him. [29 Stat. L. 490.]

"By the provisions of 1890, May 2, ch. 182, sec. 25, Greer county, Oklahoma, was excepted from the provisions of the Act providing temporary government for the territory of Oklahoma until a decision by the Supreme Court of the United States of the title contested between the United States and the state of Texas. The action brought in the Supreme Court under that Act was decided

March 16, 1896, (162 U. S. 1) and the object of this Act is to carry into effect that decision so far as it relates to title to land. Provisions were made as to the organization of the county, the ownership of property, judicial proceedings, and judgments, by 1896, May 4, ch. 155." *Compilers' note, 2 Supp. R. S. 539.*

SEC. 2. [*Unoccupied land subject to entry.*] That all land in said county not occupied, cultivated, or improved, as provided in the first section hereof, or not included within the limits of any town site or reserve, shall be subject to entry to actual settlers only, under the provisions of the homestead law. [29 Stat. L. 490.]

SEC. 3. [*Town-site entries — preference right.*] That the inhabitants of any town located in said county shall be entitled to enter the same as a town site under the provisions of sections twenty-three hundred and eighty-seven, twenty-three hundred and eighty-eight, and twenty-three hundred and eighty-nine of the Revised Statutes of the United States: *Provided*, That all persons who have made or own improvements on any town lots in said county made prior to March sixteenth, eighteen hundred and ninety-six, shall have the preference right to enter said lots under the provisions of this Act and of the general town-site laws. [29 Stat. L. 490.]

See p. 355 *et seq.*, as to town sites in Oklahoma.

SEC. 4. [*School lands.* See *infra*, div. XVI.]

SEC. 5. [*Lands for churches, etc.* See *infra*, div. XVI.]

SEC. 6. [*Land office at Mangum.* See *supra*, p. 272.]

SEC. 7. [*Application of act — commutation of homesteads.*] That the provisions of this Act shall apply only to Greer County, Oklahoma, and that all laws inconsistent with the provisions of this Act, applying to said territory in said county, are hereby repealed; and all laws authorizing commutations of homesteads in Oklahoma shall apply to Greer County. [29 Stat. L. 491.]

SEC. 8. [*Effect.*] That this Act shall take effect from its passage and approval. [29 Stat. L. 491.]

An Act To amend an Act entitled "An Act to provide for the entry of lands in Greer County, Oklahoma, to give preference rights to settlers, and for other purposes," approved January eighteenth, eighteen hundred and ninety-seven.

[Act of June 23, 1897, ch. 8, 30 Stat. L. 105.]

[*Time for exercise of preference rights extended.*] That the time for the exercise of the preference rights of entry granted to bona fide occupants of land within the territory established as Greer County, Oklahoma, by section one of an Act entitled "An Act to provide for the entry of lands in Greer County, Oklahoma, to give preference rights to settlers, and for other purposes," approved January eighteenth, eighteen hundred and ninety-seven, be, and the same is hereby, extended to January first, eighteen hundred and ninety-eight. [30 Stat. L. 105.]

An Act To amend section one of an Act to provide for the entry of lands in Greer County, Oklahoma Territory, to give preference right to settlers, and for other purposes.

[Act of March 1, 1899, ch. 328, 30 Stat. L. 966.]

[*Settlers who purchased from Texas allowed to perfect titles.*] That section one of an Act to give preference right to settlers in Greer County, Oklahoma Territory, is hereby so amended as to allow parties who have had the benefit of the homestead laws of the United States, and who had

purchased land in Greer County from the State of Texas prior to March sixteenth, eighteen hundred and ninety-six, to perfect titles to said lands according to the provisions of section one hereinbefore mentioned, under such regulations as the Commissioner of the General Land Office may prescribe, and according to the legal subdivisions of the public surveys, if no adverse rights have attached: *Provided*, That no settler shall be permitted to acquire to exceed three hundred and twenty acres under this provision. [30 Stat. L. 966.]

[XIV. ABANDONED MILITARY AND NAVAL RESERVATIONS.]

An act to provide for the disposal of abandoned and useless military reservations.

[Act of July 5, 1884, ch. 214, 23 Stat. L. 103.]

[SEC. 1.] [*Disposal of abandoned and useless military reservations.*] That whenever, in the opinion of the President of the United States, the lands, or any portion of them, included within the limits of any military reservation heretofore or hereafter declared, have become or shall become useless for military purposes, he shall cause the same or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior for disposition as hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof. [23 Stat. L. 103.]

Authority to restore to public domain.—Where a part of the public domain has once been reserved by the President for military or other public purposes, and subsequently the land so reserved becomes unnecessary for such purposes, it cannot be restored to the public domain without authority from Congress. (1881) 17 Op. Atty.-Gen. 168. See also (1878) 16 Op. Atty.-Gen. 121; (1862) 10 Op. Atty.-Gen. 359.

Applicability of Act.—In a case where a patent had issued and title had passed from the government prior to the enactment of the Act of July 5, 1884, ch. 214, 23 Stat. L. 103, it was held that the statute could have

no significance. *Johnson v. Drew*, (1898) 171 U. S. 93.

Private claim—Ownership of buildings.—Where land established as a military reservation includes the private claim of an individual, which was subsequently discovered and the use of the reservation discontinued, and upon the land are erected some twenty-two buildings, but in the patent issued to the claimant there was a clause reserving to the United States its rights to ownership in the buildings, it was held that the ownership of the buildings was in the United States. (1893) 20 Op. Atty.-Gen. 603.

SEC. 2. [*Survey, subdivision, appraisal, sale, etc.—rights of actual settlers.*] That the Secretary of the Interior may, if in his opinion the public interests so require, cause the said lands, or any part thereof, in such reservations, to be regularly surveyed, or to be subdivided into tracts of less than forty acres each, and into town lots, or either, or both. He shall cause the said lands so surveyed and subdivided, and each tract thereof, to be appraised by three competent and disinterested men to be appointed by him, and who shall, after having each been first duly sworn to impartially and faithfully execute the trust reposed in them, appraise the said lands, subdivisions, and tracts, and each of them and report their proceedings to the Secretary of the Interior for his action thereon. If such appraisal be disapproved, the Secretary of the Interior shall again cause the said lands to be appraised as before provided; and when the appraisal has been approved he shall cause the said lands, subdivisions, and lots to be sold at public sale, to the highest bidder for cash, at not less than the appraised value thereof, nor less than one dollar and twenty-five cents per acre, first

having given not less than sixty days' public notice of the time, place, and terms of sale, immediately prior to such sale, by publication in at least two newspapers having a general circulation in the country [sic] or section of county [sic] where the lands to be sold are situate; and any lands, subdivisions, or lots remaining unsold may be reoffered for sale at any subsequent time in the same manner, at the discretion of the Secretary of the Interior; and if not sold at such second offering for want of bidders, then the Secretary of the Interior may sell the same at private sale, for cash, at not less than the appraised value, nor less than one dollar and twenty-five cents per acre: *Provided*, That any settler who was in actual occupation of any portion of any such reservations prior to the location of such reservation, or settled thereon prior to January first, eighteen hundred and eighty-four, in good faith for the purpose of securing a home and of entering the same under the general laws and has continued in such occupation to the present time, and is by law entitled to make a homestead entry shall be entitled to enter the land so occupied, not exceeding one hundred and sixty acres in a body, according to the Government surveys and subdivisions: *Provided further*, That said lands were subject to entry under the public land laws at the time of their withdrawal: *And provided further*, That all patents heretofore issued, and approved State selections, covering any lands within the old Fort Lyon Military Reservation, in the State of Colorado, declared by executive order of August eighth, eighteen hundred and sixty-three, are hereby confirmed; and the rights of all entrymen and settlers on said reservation to acquire title under the homestead, pre-emption, or timber culture laws are hereby recognized and affirmed to the extent they would have attached had public lands been settled upon or entered; and such portions of said reservation as shall not have been entered or settled upon as aforesaid shall be disposed of by the Secretary of the Interior under the provisions of this act, including lands that may be abandoned by settlers or entrymen. [23 Stat. L. 103.]

Right of settler to enter land occupied.—The right given by the Act of Congress (chapter 214, Acts of 1884) to a settler upon a military reservation when entitled to make a homestead entry, to enter one hundred and sixty acres in a body, is dependent upon the fact that the land was subject to entry under the public land laws at the time of its withdrawal; and when a settler upon a portion of a military reservation, without any certificate of entry or showing any privity with the title of the government other than that of bare possession and claiming to enter the land under the said Act, seeks to defeat a patent to the land issued by the land-office department, on the ground that he was in

actual possession when the patent issued, it is incumbent on him to show that the land occupied by him was subject to entry under the public lands at the time of its withdrawal for a military reservation. *Johnson v. Drew*, (1894) 34 Fla. 130.

No preference rights after withdrawal.—There is nothing in the Act of July 5, 1884, which offers to settlers or occupants who enter into possession of any subdivision or lot subsequent to the executive order of withdrawal, any preference right of entry or purchase. Any subsequent occupant has only the usual right of any other citizen to purchase at the public sale. *Walsh v. Ford*, (1901) 1 Alaska 146.

SEC. 3. [*Appraisal and sale of buildings, etc., on reservations—sale of lands to owners of improvements—proceeds of sales.*] That the Secretary of the Interior shall cause any improvements, buildings, building materials, and other property which may be situate upon any such lands, subdivisions or lots not heretofore sold by the United States authorities, to be appraised in the same manner as hereinbefore provided for the appraisements of such lands, subdivisions, and lots, and shall cause the same, together with the tract or lot upon which they are situate, to be sold at public sale, to the highest bidder for cash, at not less than the appraised value of such land and improvements, first giving the sixty days' notice as hereinbefore provided; or he may, in his discretion, cause the improvements to be sold separately, at public sale for cash, at not less than the appraised value, to be removed by the purchaser within such time as

may be prescribed, first giving the sixty days' public notice before provided; and if in any case the lands and improvements, or the improvements separately, as the case may be, are not sold for want of bidders, then the Secretary of the Interior may, in his discretion, cause the same to be reoffered for sale, at any subsequent time, in the same manner as above provided, or may cause the same to be sold at private sale for not less than the appraised value: *Provided*, That where buildings or improvements have been heretofore sold by the United States authorities the land upon which such buildings or improvements are situate not exceeding the smallest subdivision or lot provided for by this act upon the reservation on which said buildings are situate shall be offered for sale to the purchaser of said improvements and buildings at the appraised value of the lands and if said purchaser shall fail for sixty days after notice to complete said purchase of lands the same shall be sold under the provisions of this act: *And provided further* That the proceeds of the military reservation lands sold on Bois Blanc Island near to Fort Mackinaw military reservation shall be set apart as a separate fund for the improvement of the National Park on the Island of Mackinaw Michigan under the direction of the Secretary of War. [23 Stat. L. 103.]

SEC. 4. [*Repeal of laws relating to reservations in Florida.*] That the provisions of the act of August eighteenth, eighteen hundred and fifty-six, relative to military reservations in the State of Florida, and the sixth section of the act of June twelfth, eighteen hundred and fifty-eight, relative to the sale of military sites be, and the same are hereby, repealed. [23 Stat. L. 103.]

The piece of land known as the Dragoon Barracks lot, in St. Augustine, Fla., and the buildings thereon, being the property of the United States, may be appraised and disposed

of in the manner provided by the second and third sections of the Act of July 5, 1884, ch. 214. (1887) 18 Op. Atty-Gen. 543.

SEC. 5. [*Lands containing mineral deposits.* See MINERAL LANDS, MINES, AND MINING, vol. 5, p. 7.]

SEC. 6. [*Right of way across reservations.* See *infra*, div. XVIII.]

[*Grant of portions of abandoned reservations to municipal corporations.*]
 * * * That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place. * * * [27 Stat. L. 593.]

This is from the Sundry Civil Appropriation Act of March 3, 1893, ch. 208.

An act to provide for the opening of certain abandoned military reservations, and for other purposes.

[Act of Aug. 23, 1894, ch. 314, 28 Stat. L. 491.]

[SEC. 1.] [*Abandoned reservations opened to settlement under land laws — preference to settlers.*] That all lands not already disposed of included within the limits of any abandoned military reservation heretofore placed under the control of the Secretary of the Interior for disposition under the Act approved July fifth, eighteen hundred and eighty-four, the disposal of which has not been provided for by a subsequent Act of Congress, where the area exceeds five thousand acres, except such legal subdivisions as have Government improve-

ments thereon, and except also such other parts as are now or may be reserved for some public use, are hereby opened to settlement under the public-land laws of the United States, and a preference right of entry for a period of six months from the date of this Act shall be given all bona fide settlers who are qualified to enter under the homestead law and have made improvements and are now residing upon any agricultural lands in said reservations, and for a period of six months from the date of settlement when that shall occur after the date of this Act: *Provided*, That persons who enter under the homestead law shall pay for such lands not less than the value heretofore or hereafter determined by appraisement, nor less than the price of the land at the time of the entry, and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior. [28 Stat. L. 491.]

For amendment to this Act, see Act of Feb. 15, 1895, ch. 92, *infra*.

SEC. 2. [*Reservations hereafter abandoned — appraisements, how made.*] That nothing contained in this Act shall be construed to suspend or to interfere with the operation of the said Act approved July fifth, eighteen hundred and eighty-four, as to all lands included in abandoned military reservations hereafter placed under the control of the Secretary of the Interior for disposal, and all appraisements required by the first section of this Act shall be in accordance with the provisions of said Act of July fifth, eighteen hundred and eighty-four. [28 Stat. L. 491.]

An Act To amend and extend the provisions of an Act entitled "An Act to provide for the opening of certain abandoned military reservations, and for other purposes," approved August twenty-third, eighteen hundred and ninety-four.

[Act of Feb. 15, 1895, ch. 92, 28 Stat. L. 664.]

[SEC. 1.] [*Abandoned reservations opened to settlement under land laws.*] That the provisions of the Act approved August twenty-third, eighteen hundred and ninety-four, entitled "An Act to provide for the opening of certain abandoned military reservations, and for other purposes," are hereby extended to all abandoned military reservations which were placed under the control of the Secretary of the Interior under any law in force prior to the Act of July fifth, eighteen hundred and eighty-four. [28 Stat. L. 664.]

SEC. 2. [*Preference to settlers.*] That the preference right of entry given to actual settlers by the terms of the Act to which this is an amendment shall, so far as the lands to which the provisions of said Act are extended, take effect and continue for six months from the date of this amendatory Act. [28 Stat. L. 664.]

An act for the relief of certain claimants under the donation land law of Oregon, approved September twenty-seventh, eighteen hundred and fifty.

[Act of Feb. 28, 1877, ch. 74, 19 Stat. L. 264.]

[*Patents to settlers on abandoned military reservations in Washington and Oregon.*] That the claims of such persons who were duly qualified thereto, and made bona-fide settlements upon lands in the State of Oregon and Washington Territory, under the provisions of the act of Congress, approved September

twenty-seventh, eighteen hundred and fifty, entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands," and the legislation supplemental thereto, which have been included, in whole or in part, within the limits of any reservation made by the United States for military purposes subsequent to the date of such settlement and prior to the completion of the period of residence and cultivation required by said act, which reservation has been, or may hereafter be, declared abandoned by the Secretary of War as no longer necessary to the United States for military or other purposes, shall be adjudicated and patented the same as other donation claims arising under said act and supplemental legislation, as though such reservation had never been made: *Provided however*, That no claim of any settler coming within the purview of this act shall be validated or confirmed the value of whose improvements, at the time such reservation was made by the United States, has been ascertained and paid for by the Secretary of War, as required by the aforesaid act of September twenty-seventh, eighteen hundred and fifty, and the legislation supplemental thereto. [19 Stat. L. 264.]

An act to open abandoned military reservations in the State of Nevada to homestead entry.

[Act of Oct. 1, 1890, ch. 1239, 26 Stat. L. 561.]

[*Disposal of military reservations in Nevada.*] That all the agricultural lands embraced within the military reservations in the State of Nevada which have been placed under the control of the Secretary of the Interior for disposition be disposed of under the homestead laws, and not otherwise. [26 Stat. L. 561.]

An act to provide for the disposal of the Old Fort Lyon and Fort Lyon and Pagosa Springs military reservations, in the State of Colorado, to actual settlers, under the provisions of the homestead laws.

[Act of Oct. 1, 1890, ch. 1240, 26 Stat. L. 561.]

[SEC. 1.] [*Disposal of Fort Lyon and Old Fort Lyon military reservations.*] That the lands embraced in the former military reservation known as Fort Lyon and the former military reservation known as Old Fort Lyon, in the State of Colorado, shall, from and after the passage of this act, be subject to disposal, to actual settlers thereon, as lands held at the minimum price, according to the provisions of the homestead laws only: *Provided*, That section numbered four, in township numbered twenty-three, range numbered fifty-one, shall not be subject to the provisions of this act, and it is hereby exempted from the same. [26 Stat. L. 561.]

SEC. 2. [*Disposal of Pagosa Springs military reservation.*] That the lands embraced in the former military reservation known as Pagosa Springs military reservation, lying partly in townships thirty-five and thirty-six, ranges one and two west of the New Mexico meridian, containing twenty-two thousand four hundred and seventy-one and seventy-seven one-hundredths acres, in the State of Colorado, shall, from and after the passage of this act be subject to disposal, to actual settlers thereon, according to the provisions of the homestead laws only, with the exception of the land reserved by Executive order of May twenty-second, eighteen hundred and seventy-seven, one mile square for town-site purposes, which shall not be affected by this act. [26 Stat. L. 561.]

An Act To provide for the disposal of the Fort Buford abandoned military reservation, in the States of North Dakota and Montana.

[*Act of May 19, 1900, ch. 484, 31 Stat. L. 180.*]

[*Disposal of Fort Buford military reservation.*] That all public lands now remaining undisposed of within the abandoned military reservation in the States of North Dakota and Montana, formerly known as Fort Buford Military Reservation, and which are not otherwise occupied or used for any public purpose, are hereby made subject to disposal under the homestead, town-site, and desert-land laws: *Provided*, That actual occupants thereon upon the first day of January, nineteen hundred, if otherwise qualified, shall have the preference right to make one entry not exceeding one quarter-section: *Provided further*, That any of such lands as are occupied for town-site purposes, and any of the lands that may be shown to be valuable for coal or minerals, such lands so occupied for town-site purposes or valuable for coal or minerals shall be disposed of as now provided for lands subject to entry and sale under the town-site, coal, or mineral-land laws, respectively: *Provided further*, That this act shall not apply to any subdivision of land, which subdivision may include adjoining lands to the amount of one hundred and sixty acres, on which any buildings or improvements of the United States are situated, but such lands shall be appraised and sold as now provided by law. [31 Stat. L. 180.]

An Act Granting homesteaders on the abandoned Fort Fetterman Military Reservation in Wyoming the right to purchase one quarter section of public land on said reservation as pasture or grazing land.

[*Act of March 3, 1901, ch. 833, 31 Stat. L. 1085.*]

[*Disposal of Fort Fetterman military reservation.*] That each person who has exercised the right of homestead entry on the abandoned Fort Fetterman reservation in the State of Wyoming shall, upon proper proof of settlement and homestead upon land covered by said entry, be entitled to the right to purchase, under such rules and regulations as the Secretary of the Interior may prescribe, at one dollar and twenty-five cents per acre, not exceeding one quarter-section of the public lands on said reservation as pasture or grazing land not otherwise disposed of: *Provided*, That land so purchased be unfitted for cultivation and homestead entry by reason of lack of water for irrigating purposes or otherwise: *And provided further*, That said purchase of pasture or grazing land shall not, with the land heretofore entered by the applicant, exceed in the aggregate three hundred and twenty acres. [31 Stat. L. 1085.]

An act to authorize the Secretary of the Navy to certify to the Secretary of the Interior, for restoration to the public domain, lands in the states of Alabama and Mississippi not needed for naval purposes.

[*Act of March 2, 1895, ch. 182, 28 Stat. L. 814.*]

[*Naval reservations in Alabama and Mississippi restored to public domain — preference right of settlement.*] That the Secretary of the Navy be, and he is hereby, authorized to cause to be certified to the Secretary of the Interior, for restoration to the public domain, the whole or such portion or portions of the several tracts of land in the States of Alabama and Mississippi heretofore set apart and reserved for naval uses as are no longer required for the purposes for which they were reserved, or for any purposes connected with the naval service; and upon such certification the tracts of land described therein shall be

duly restored to and become a part of the public lands of the United States and a preference right of entry for a period of six months from the date of this Act shall be given all bona fide settlers who are qualified to enter under the homestead law and have made improvements and are now residing upon any agricultural lands in said reservations, and for a period of six months from the date of settlement when that shall occur after the date of this Act: *Provided*, That persons who enter under the homestead law shall pay for such lands not less than the value heretofore or hereafter determined by appraisement, nor less than the price of the land at the time of the entry; and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior: *Provided*, That so much of the said lands as are situated on Back Bay, near the city of Biloxi, in the State of Mississippi, shall be disposed of under the town-site law and not as agricultural lands. [28 Stat. L. 814.]

[XV. GRANTS IN AID OF OR FOR RAILROADS AND WAGON ROADS.]

An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases.

[Act of June 18, 1874, ch. 305, 18 Stat. L. 80.]

[*Patents for lands granted for construction of wagon roads in Oregon.*]

Whereas certain lands have heretofore, by acts of Congress, been granted to the State of Oregon to aid in the construction of certain military wagon-roads in said State, and there exists no law providing for the issuing of formal patents for said lands: Therefore,

That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall by public act have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon their payment of the necessary expenses thereof: *Provided*, That this shall not be construed to revive any land grant already expired nor to create any new rights of any kind except to provide for issuing patents for lands to which the State is already entitled. [18 Stat. L. 80.]

Significance of Act.—In *Altschul v. Clark*, (1901) 39 Oregon 315, it was held that where a road company selected certain lands, under the Act of July 5, 1866, filed the selection list in the local land office, and paid or tendered the usual fees, the grant did not operate to pass title, and that it was necessary for the secretary of the interior to approve of the selection as a condition precedent to the passing of the title. The court said: "This seems to be the interpretation placed upon the grant by Congress in adopting the Act of June 18, 1874. * * * While it was not intended thereby to ingraft upon the original Act a condition that the patents should issue as a prerequisite to the passing of the title,

it indicates quite clearly that the primary intention of Congress was that the selection should receive the certification or, in other words, the approval of the secretary of the interior, before the grant should become effective."

Effect of Act and patent issued thereunder.—In *Pengra v. Munz*, (1887) 29 Fed. Rep. 830, the court said: "The subsequent passage of the Act of 1874, authorizing patents to issue, * * * did not affect the title already vested. The effect of a patent, when issued under that Act, is not to pass the title, but to give the patentee record evidence of an already existing one. Wherefore it is of no moment that it does not appear that a patent

has issued to the state or its grantee for the premises. The title of the latter was complete on the approval of the secretary * * * of the selection." See also *Cahn v. Barnes*, (1881) 5 Fed. Rep. 326.

By the Act of June 18, 1874, 18 Stat. L. 80, it is in effect recited that Congress had "granted" certain lands to the state of Oregon, "to aid in the construction of certain military wagon roads" therein, and that there is no law for the issuance of "formal patents" therefor; and the Act in effect provides that whenever it appears "from the certificate of the governor," as provided in said Act, that any of said roads has been "constructed and completed," a patent shall issue to the state for said lands, or to any corporation to whom it may have transferred its interest therein, "as fast as the same shall, under said grants, be selected and certified." *Pengra v. Munz*, (1887) 29 Fed. Rep. 830.

Improvements by bona fide transferee.—In *U. S. v. Willamette Valley, etc., Wagon-Road Co.*, (1892) 54 Fed. Rep. 807, it was held that the United States would be precluded from enforcing a forfeiture of a wagon-road grant against a *bona fide* transferee thereof where the question of the construction of the road was investigated, and patents thereafter issued, and the defendants, assuming that such action was a final determination of the question of title, and relying on the same, made expenditures. See also *U. S. v. Willamette Valley, etc., Wagon Road Co.*, (1892) 55 Fed. Rep. 711.

Patent conclusive that lands are within grant.—In *Cahn v. Barnes*, (1881) 5 Fed. Rep. 326, it was held that a patent issued under the above Act was conclusive evidence at law that the lands belonged to the wagon-road grant and not to the swamp-land grant.

Certificate of governor—Effect of.—In *U. S. v. Dalles Military Road Co.*, (1890) 41 Fed. Rep. 493, it was held that "(1) The Act granting lands in aid of the Dalles military road passed a present title to the state of Oregon, to be defeated only by a breach of conditions subsequent. (2) The fact that the governor's certificate was not made on completion of each section of ten miles of the road makes no difference. * * * (3) The authority to determine whether the road was completed was vested solely in the governor of Oregon, whose decision, in the absence of any such fraud as would vitiate it, is necessarily final and conclusive. (4) The right to

a patent once vested is equivalent, as respects the government dealing with the public lands, to a patent issued. (5) Purchasers of these lands from the state's grantee * * * were entitled to rely upon the record, constituted by the * * * Acts of Congress and of the state, the withdrawal of the lands by the commissioner, and the governor's certificate. * * * (7) Where fifteen years have elapsed after affirmative and confirmatory action by Congress in directing the issue of patents to lands in all cases where the certificate of the governor had been made, and twenty years have elapsed after the date of such certificates, * * * it is not within the established principles of equity jurisprudence" to allow a suit for the forfeiture of the lands and a cancellation of the patents to be maintained. To the same general effect, see *U. S. v. Wallamet Valley, etc., Wagon-Road Co.*, (1890) 44 Fed. Rep. 234, 42 Fed. Rep. 351. The decrees in these cases, however, were reversed in (1891) 140 U. S. 599, wherein it was held that where the pleas which alleged that the respondents were *bona fide* purchasers, and the absence of fraud in the issuance of the governor's certificates, were sustained after having been set down for a hearing, the United States should have been allowed to put in issue the matter alleged in the pleas. It was also held that the defense of laches was not available against the United States. After the decision of the Supreme Court in 140 U. S. 599, replications were filed by the United States to the pleas. The Circuit Court of Appeals held that the trial of the case would be on the issues presented by the pleas, and if the defendants were found to be *bona fide* purchasers, the dismissal of the bill should follow, regardless of the question of the completion of the road or of fraud touching the governor's certificate. It was also held that evidence to the effect that the governor's certificate was procured by fraud was inadmissible in the absence of a showing of implication by or on behalf of the road company or its grantees; that since the Act of 1874, which authorized patents to issue upon the governor's certificate, purchasers in good faith from the road company had the right to rely upon the certificate, and in the absence of implication on their part, evidence that the road was not constructed was immaterial. *U. S. v. Dalles Military Road Co.*, (1892) 51 Fed. Rep. 629.

An act for the relief of settlers on railroad lands.

[Act of June 22, 1874, ch. 400, 18 Stat. L. 194.]

[*Selection of lieu lands by railroads relinquishing lands entered by settlers—title of settlers.*] That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the land-office, the right of said road was declared to have attached to such lands, the

grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: *Provided*, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend to lands reserved in any land grant made for railroad purposes: *And provided further*, That this act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of the road and prior to the notice to the local land-office of the withdrawal of such lands from market. [18 Stat. L. 194.]

Privileges of Act extended. — See following section, and Act of July 1, 1902, ch. 1386, *infra*, p. 451.

Prior appropriation. — Where certain lands were reserved for a special purpose and did not pass to a railroad company although within the limits of its grant, it was held that the fact that in 1874 Congress passed an Act which extended the homestead law to all settlers on such lands who might desire

to take advantage of the same, would not have the effect to take the lands from the special appropriation thereof, and restore the same to the condition of the mass of the public domain, so as to make the railroad grant attach by the subsequent fixing of the definite route of the railroad and by the filing of a plat thereof with the commissioner of the general land office. *Northern Pac. R. Co. v. Hinchman*, (1892) 53 Fed. Rep. 523.

An act to amend an act entitled "An act for the relief of settlers on railroad lands," approved June twenty-second, eighteen hundred and seventy-four.

[Act of Aug. 29, 1890, ch. 319, 26 Stat. L. 369.]

[*Rights of settlers with unrecorded entries on railroad lands.*] That the privileges granted by the aforesaid act approved June twenty-second, eighteen hundred and seventy-four, are hereby extended (subject to the provisos, limitations, and restrictions thereof) to all persons entitled to the right of homestead or pre-emption under the laws of the United States, who have resided upon and improved for five years lands granted to any railroad company, but whose entries or filings have not for any cause been admitted to record. [26 Stat. L. 369.]

An act for the relief of settlers on lands within railroad limits.

[Act of March 3, 1875, ch. 196, 18 Stat. L. 519.]

[*Settlers within limits of railroad grants forfeited to United States.*] That where any actual settler who shall have paid for any lands situate within the limits of any grant of lands by Congress to aid in the construction of any railroad, the price of such lands being fixed by law at double minimum rates, and such railroad lands having been forfeited to the United States and restored to the public domain for failure to build such railroad, such person or persons shall have the right to locate, on any unoccupied lands, an amount equal to their original entry, without further cost, except such fees as are now provided by law in pre-emption cases: *Provided*, That when such location is upon double minimum lands, one-half the amount only shall be taken. [18 Stat. L. 519.]

An act to confirm pre-emption and homestead entries of public lands within the limits of railroad-grants in cases where such entries have been made under the regulations of the Land Department.

[Act of April 21, 1876, ch. 72, 19 Stat. L. 35.]

[SEC. 1.] [*Homestead entries within limits of land grants, prior to notice of withdrawal from or after restoration to market, confirmed.*] That all pre-emption and homestead entries, or entries in compliance with any law of the United States, of the public lands, made in good faith, by actual settlers, upon tracts of land of not more than one hundred and sixty acres each, within the limits of any land-grant, prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the local land-office of the district in which such lands are situated, or after their restoration to market by order of the General Land-Office, and where the pre-emption and homestead laws have been complied with, and proper proofs thereof have been made by the parties holding such tracts or parcels, they shall be confirmed, and patents for the same shall issue to the parties entitled thereto. [19 Stat. L. 35.]

When Act does not apply. — "The Act, by its terms, presupposes a case in which notice of withdrawal of the lands was required by law to be given. It does not * * * apply to a case where, prior to any pre-emption or homestead entry, the lands had been specially granted by an Act of Congress, and had fully vested in the grantee. To give it such a construction would be equivalent to saying that Congress intended to take lands from an owner whose title was perfect, and confer them upon another." *Taboreck v. Burlington, etc., R. Co.*, (1881) 13 Fed. Rep. 103.

"The effect of the Act of 1876 was to validate all otherwise regular pre-emption and homestead entries made prior to the time when the notice of withdrawal was received at the local land office, although such entries were made after the time when the map of general route was filed in the office of the secretary of the interior and the order of withdrawal made. * * * This Act of 1876, rightfully construed and in accordance with the spirit of congressional dealings with individual homesteaders and pre-emptors, is to be taken as a legislative enactment that no entry was to be considered invalidated by reason of the filing of the map of general route, if it was made before notice of the withdrawal was received at the local land office." *Northern Pac. R. Co. v. Amacker*, (1900) 175 U. S. 564, *affirming* (C. C. A. 1893) 58 Fed. Rep. 850, which *reversed* the judgment in (1892), 53 Fed. Rep. 48, wherein it was held that where the general route of the Northern Pacific Railroad Company was located on the 1st of February, 1872, and subsequently a party filed

his application to make an entry as a part of his homestead claim May 3, 1872, after which on May 6, 1872, notice of the withdrawal of the lands at the time of the fixing of the general route of the railroad was filed in the land office of Helena, Montana, the above Act authorized a perfection of the party's title. *Northern Pac. R. Co. v. Amacker*, (1892) 53 Fed. Rep. 48.

Where a homestead entry was made in good faith by an actual settler within the limits of a railroad grant after a map of the definite location of the road was filed, but before notice of the withdrawal of the lands covered by the grant was received at the local land office (a delay of about twelve months having occurred in giving the notice), and all the requirements of the law in regard to such an entry were complied with by the homesteader, it was held that the case was within the provisions of the Act of April 21, 1876, ch. 72, (1876) 15 Op. Atty-Gen. 583.

Act was passed after time for completion of road. — In *St. Paul, etc., R. Co. v. Greenhalgh*, (1886) 26 Fed. Rep. 563, *affirmed* (1891) 139 U. S. 19, the court held in regard to the Acts of Congress of June 22, 1874, and April 21, 1876, and the Acts of the state of Minnesota of March 1, 1877, and March 9, 1878, that "all were passed after the time given for the completion of the road, when there had been a nonperformance of the conditions of the grant, and when, therefore, there existed the right of absolute and total forfeiture by the grantor, the United States, and of resumption and transfer by the state to another beneficiary."

SEC. 2. [*Re-entry of claims abandoned on account of decision of land office.*] That when at the time of such withdrawal as aforesaid valid pre-emption or homestead claims existed upon any lands within the limits of any such grants which afterward were abandoned, and, under the decisions and rulings of the Land Department, were re-entered by pre-emption or homestead claimants who have complied with the laws governing pre-emption or homestead entries, and shall make the proper proofs required under such laws, such entries shall be

deemed valid, and patents shall issue therefor to the person entitled thereto. [19 Stat. L. 35.]

SEC. 3. [*Entries after expiration of land grant.*] That all such pre-emption and homestead entries which may have been made by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land-grant at a time subsequent to expiration of such grant, shall be deemed valid, and a compliance with the laws and the making of the proof required shall entitle the holder of such claim to a patent therefor. [19 Stat. L. 36.]

An act for the relief of certain settlers on restored railroad lands.

[*Act of Jan. 13, 1881, ch. 19, 21 Stat. L. 315.*]

[*Rights of licensed settlers on railroad lands subsequently restored to public domain.*] That all persons who shall have settled and made valuable and permanent improvements upon any odd numbered section of land within any railroad withdrawal in good faith and with the permission or license of the railroad company for whose benefit the same shall have been made, and with the expectation of purchasing of such company the land so settled upon, which land so settled upon and improved, may, for any cause, be restored to the public domain, and who, at the time of such restoration, may not be entitled to enter and acquire title to such land under the pre-emption, homestead, or timber-culture acts of the United States, shall be permitted, at any time within three months after such restoration, and under such rules and regulations as the Commissioner of the General Land Office may prescribe, to purchase not to exceed one hundred and sixty acres in extent of the same by legal sub-divisions, at the price of two dollars and fifty cents per acre, and to receive patents therefor. [21 Stat. L. 315.]

Where the land is included in a forest reservation the settler's right granted by the above Act is not barred, because the land was included in the reservation which was created by the President's proclamation before it was surveyed and subsequent to the setting aside of the withdrawal. *Holmes v. U. S.*, (C. C. A. 1902) 118 Fed. Rep. 995, *reversing* (1900) 105 Fed. Rep. 41. Concerning the decision of the court below, the Circuit Court of Appeals said: "The Circuit Court decided this question adversely to the plaintiff in error, H., for the reason that at the time when he made his settlement the lands were withdrawn from entry and settlement; *citing* *Maddox v. Burnham*, (1895) 156 U. S. 544, and *Wood v. Beach*, (1895) 156 U. S. 548. In so ruling, the Circuit Court followed the law as it was understood, and as it had been settled by a series of decisions of the Supreme Court. A few

months after the decision of the Circuit Court was rendered, however, the Supreme Court, in *Hewitt v. Schultz*, (1901) 180 U. S. 139, overruled its prior decisions, and denied the efficacy of the act of withdrawal to exclude from settlement land which was not in fact withdrawn by the operation of a present grant, and which, but for the withdrawal, would have been open to entry and settlement under the public-land laws. By the decision in that case and in the subsequent case of *Southern Pac. R. Co. v. Bell*, (1902) 183 U. S. 675, the court has held that the withdrawal of lands by the secretary of the interior for the reason that they were supposed to be within the limits of a grant to a railroad company could not injuriously affect the right of a settler upon such land, who claimed the right to enter and settle the same as public land of the United States."

An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes.

[*Act of March 3, 1887, ch. 376, 24 Stat. L. 556.*]

[SEC. 1.] [*Adjustment by Secretary of Interior of land grants to railroads.*] That the Secretary of the Interior be, and is hereby authorized and

directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted. [24 Stat. L. 556.]

Purpose of Act.—In the case of *Kansas Pac. R. Co. v. Dunmeyer*, (1885) 113 U. S. 629, the Supreme Court decided that under the Act of July 1, 1862, and the Acts amendatory thereof, granting lands to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, (12 St. L. 489) lands to which a pre-emption or homestead claim had attached at any time before the line of the road was definitely fixed, by filing a map of its location with the commissioner of the general land office at Washington, were exempted from the operation of the grant, and that the failure of the pre-emptor or homesteader to make the requisite proof and perfect his claim, or its actual abandonment, did not cause the land to revert to the railroad company or become a part of the grant, but in such case it remained a part of the public domain. Before this decision was pronounced, the government had issued patents or patent certificates to the railway company for lands which were not within the grant, because pre-emption and homestead rights had attached thereto before the company filed the map of the definite location of its road in the general land office. In some instances the company had sold and conveyed such lands. After the decision in the *Dunmeyer* case, it was plain that, as to all lands to which the right of pre-emption or homestead had attached prior to the definite location of the line of railroad, the patents issued to the railroad company by the government were void. It was equally plain that the purchasers from the railroad company of such lands acquired no title. To correct the mistake of the land department in patenting lands to the railway company not within the grant, and to relieve, as far as practicable, all persons from loss or injury by reason of the mistake, and to place all parties, as far as it could be done, in the same situation they would have been if the mistake had not occurred, Congress passed the Act of March 3, 1887 (24 Stat., ch. 376, p. 556). See also *Wagstaff v. Collins*, (C. C. A. 1899) 97 Fed. Rep. 3.

In *U. S. v. Southern Pac. R. Co.*, (1902) 184 U. S. 49, the court said, in speaking of the Acts of Congress of March 3, 1887, Feb. 12, 1896, and March 2, 1896: "These Acts were passed for the purpose of upholding the titles of parties who in good faith had purchased from railroad companies lands which though supposed to be part of their grants, proved not to be so."

The entire statute is remedial in its nature and must be construed so as to carry out the intent of Congress and to secure the intended relief. "Primarily, the purpose was to secure an adjustment of the various land grants in aid of railroads. Much confusion had existed in the construction and administration of those grants. There had been conflicting decisions, and Congress attempted, without displacing vested rights, to do equity to all

parties claiming interests in lands within these various grants. It did not purpose to merely define legal rights or prescribe new methods for their enforcement. The courts were competent under the law, as it stood, without additional legislation to preserve such rights. There were three parties whose interests and equities were to be regarded: First, the railway company, the beneficiary of the grant; second, parties who had dealt with the railway company in reference to lands claimed by it to be within the scope of its grant; and, third, parties who had attempted to secure title under the settlement laws of the United States. With reference to the railway company, * * * Congress aimed to limit its acquisition of title to the amount of land which it had in fact earned by the construction of the road, and prescribed that the adjustment with it should be made in accordance with the rules of [the Supreme Court of the United States]; authorized actions to recover any lands improperly conveyed to the company, or, if the company had parted with them, the value thereof in money. As to those who had dealt with the railway company, its evident purpose was to secure to them the lands they had contracted for, in so far as it could be done without trespassing on the rights of settlers." *Gertgens v. O'Connor*, (1903) 191 U. S. 237, *affirming* (1902) 85 Minn. 481. See also *U. S. v. Southern Pac. R. Co.*, (1902) 117 Fed. Rep. 544.

Act cannot operate to free reservations.—Where a conveyance from a railroad company contained reservations, it was held that the Act of March 3, 1887, and the concurrent resolution of June 10, 1896, could not operate to free the title of a purchaser from the reservations. *Adams v. Henderson*, (1897) 168 U. S. 573.

Where adjustments have been made.—The powers conferred by the above Act upon the secretary of the interior to make adjustments and to cause suits to be brought, is confined to grants previously unadjusted. *U. S. v. Des Moines Valley R. Co.*, (1895) 70 Fed. Rep. 435, *affirmed* (C. C. A. 1897) 84 Fed. Rep. 40.

A bona fide purchaser is entitled to protection under the Act of March 3, 1887. *U. S. v. St. Paul, etc., R. Co.*, (C. C. A. 1895) 67 Fed. Rep. 973, *affirmed* (1896) 165 U. S. 482; *U. S. v. Winona, etc., R. Co.*, (C. C. A. 1895) 67 Fed. Rep. 948, *affirmed* (1897) 165 U. S. 463; *U. S. v. Union Pac. R. Co.*, (C. C. A. 1895) 67 Fed. Rep. 974, *affirmed* (1896) 165 U. S. 482.

The Act of Congress of March 3, 1887, makes it the duty of the department and of the courts, in dealing with the matter of the readjustment of these land grants, to carefully protect the rights and equities of actual settlers. Hence, the rule should be followed that in making such adjustment, so far as it may be possible to do so, actual settlers shall not be deprived of their farms or homes, even

if, to do so, it may require the apportionment to the company of a section or other quantity of land within the indemnity limits,

which would not fall within the nearest tiers of sections. *U. S. v. Sioux City, etc., R. Co.*, (1890) 43 Fed. Rep. 617.

SEC. 2. [*Patents erroneously issued to be canceled.*] That if it shall appear, upon the completion of such adjustments respectfully, [respectively?] or sooner, that lands have been, from any cause, heretofore erroneously certified or patented, by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits, and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States. [24 Stat. L. 556.]

"A chief purpose of the Act of 1887 was to declare forfeited unearned lands and restore them to the public domain, and not to give third parties and speculators an opportunity to purchase such lands from companies which had defaulted in the work of construction, and to whom the state had never conveyed, and thereby obtain a preference over actual settlers in possession." *Knepper v. Sands*, (1904) 194 U. S. 476.

The Adjustment Act of March 3, 1887, is not limited to cases of failure to complete the entire line, for it is declared in section 2 "that if it shall appear, upon the completion of such adjustments respectfully [*sic*], or sooner, that lands have been, from any cause, heretofore erroneously certified or patented, by the United States * * * it shall be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings." *Brett v. Meisterling*, (1902) 117 Fed. Rep. 768.

Authority of government to sue.—Under the above Act and those of Feb. 12, 1896, and March 2, 1896, the government may maintain a suit in equity to set aside a patent for land erroneously granted and to determine the rights of parties who claim to be *bona fide* purchasers, confirm their rights, and in the same proceeding demand an accounting from the railroad company in regard to lands sold and have a decree for the amounts authorized to be recovered. *U. S. v. Southern Pac. R. Co.*, (1902) 117 Fed. Rep. 544.

Certification of lands already covered by a homestead or pre-emption entry is erroneous and without authority of law. The Act of March 3, 1887, ch. 376, is mandatory, and makes it the duty of the United States to bring a suit to restore title to the United States if the party to whom the land was erroneously certified after a prior certification does not give or procure a relinquishment or reconveyance. (1891) 20 Op. Atty.-Gen. 224.

Controlling action of department.—The above Act does not authorize the courts to

restrain or control the action of the department in matters of judicial cognizance. *Sioux City, etc., R. Co. v. U. S.*, (1888) 34 Fed. Rep. 835.

Mineral lands erroneously patented.—Where land patented to a railroad company was known to be mineral land prior to the issuance and delivery of the patent therefor, the court held that the Act of March 3, 1887, authorized a suit to cancel the patent. *U. S. v. Central Pac. R. Co.*, (1898) 84 Fed. Rep. 218.

The cutting of timber will not be enjoined before a hearing on the merits in a suit by the United States to cancel land grants to a railroad company, and conveyances by the company to purchasers, when the railroad company alleges facts that if proved may sustain the company's title. *U. S. v. Southern Pac. R. Co.*, (1893) 55 Fed. Rep. 566.

Defenses.—The fact that the land department committed error in issuing patents for lands which did not belong to the railroad company does not constitute a defense to an action to recover the lands or their value, where they were sold to *bona fide* purchasers: especially where the company was not deprived of acquiring all the lands to which it had a right. *U. S. v. Southern Pac. R. Co.*, (1902) 117 Fed. Rep. 544.

Laches.—Where a suit which was brought to cancel a patent is in reality one between private parties, the court may take into consideration the equities of the case, such, for example, as whether laches exists. *U. S. v. Chicago, etc., R. Co.*, (C. C. A. 1902) 116 Fed. Rep. 969.

Parties defendant.—In a suit under the above Act and its amendments, where it appears that the purchasers from the railroad company occupying the same position are very numerous, all need not be made defendants, but some may be made parties to represent all, in which case all the titles may be confirmed if the parties were *bona fide* purchasers. *U. S. v. Southern Pac. R. Co.*, (1902) 117 Fed. Rep. 544.

SEC. 3. [*Entries of bona fide settlers, erroneously canceled, may be perfected.*] That if, in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of any bona fide settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided*, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided also*, That he did not voluntarily abandon said original entry: *And provided further*, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon. [24 Stat. L. 557.]

Effect of Act.—"By this section Congress provided for a reinstating of the title of one deprived thereof by an erroneous ruling of the land department, but, at the same time, limited the right of reinstating to cases in which the original entryman had not voluntarily abandoned his entry, or had not since that time made a new entry. In other words, it was limiting the restoration of the title of the original entryman to cases in which he had a continuing and present equitable right to recognition. As to all other cases, Congress reserved the determination of the equities between the government, the railroad company, and purchasers from the latter, and in subsequent sections it made provision for the adjustment of such equities." U. S. v. Winona, etc., R. Co., (1897) 165 U. S. 463.

The terms "bona fide purchasers of said unclaimed lands," as used in the third proviso of section 3 of the Act of March 3, 1887, ch. 376, mean those persons who, without knowledge or wrong or error, have purchased from the railroad company lands which

had been previously entered by a pre-emption or homestead settler, whose entry had been erroneously canceled as described in the first clause of that section, and which land the pre-emption or homestead settler did not elect to claim after the recovery by the proceedings prescribed by the second section of the Act. (1887) 19 Op. Atty-Gen. 68.

Breach of warranty—invalid patents.—Where a subsequent grantee in possession of land and claiming the rights of a bona fide purchaser under the Act sued his grantor for a breach of a covenant of warranty because the patent issued to the railroad company for the land was void, the court held that the action could not be maintained. Burr v. Greeley, (C. C. A. 1892) 52 Fed. Rep. 926. See also Montgomery v. Northern Pac. R. Co., (1895) 67 Fed. Rep. 445, holding that under section 4 of the Act of March 3, 1887 innocent purchasers from a railroad company cannot maintain an action for a breach of warranty against it, even though no rules have been made by the secretary of the interior.

SEC. 4. [*Patents to purchasers from railroads—liability of railroads for purchase money.*] That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased, upon making proof of the fact of such purchase at the proper land-office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suit or suits to be brought against such company for the said amount: *Provided*, That nothing in this act shall prevent any purchaser of lands

erroneously withdrawn, certified, or patented as aforesaid from recovering the purchase-money therefor from the grantee company, less the amount paid to the United States by such company as by this act required: *And provided*, That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land-grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions. *Provided further*, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Government a sum equal to the difference between the portion of the purchase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser. [24 Stat. L. 557, 29 Stat. L. 6.]

This section was amended by the Act of Feb. 12, 1896, ch. 18, 29 Stat. L. 6, by adding the last proviso given in the text.

Act is prospective in operation. — The Act was not intended to be limited to cases of purchasers from the railroad company prior to its date. The Act applied not merely to transactions had before its date, but any had before the time of final adjustment. The statute is remedial and is to be construed liberally, so as to effectuate the purpose of Congress and secure the relief which was intended. The mere date of the transaction between the purchaser and the railroad company is not of itself vital in determining whether there is or is not an equity in behalf of the purchaser. *U. S. v. Southern Pac. R. Co.*, (1902) 184 U. S. 49, *affirming* in part (*C. C. A. 1899*) 98 Fed. Rep. 45, *affirming* (1898) 88 Fed. Rep. 832. But see *Manley v. Tow*, (1901) 110 Fed. Rep. 241.

"The proviso in the fourth section of the Act of Congress * * * does not add to or vary the legal rights or obligations of the parties as they existed at common law; its purpose was to preserve those rights, whatever they might be, and not to confer any new right." *Burr v. Greeley*, (*C. C. A. 1892*) 52 Fed. Rep. 926.

Issuance of patents. — Patents, the issue whereof is provided for in the fourth section of the Act of March 3, 1887, are only intended to be issued after it shall have been legally determined, in the mode prescribed in the second section, that the certification or patent to the railroad company had been erroneously issued. (1887) 19 Op. Atty-Gen. 68.

Bona fide purchasers. — Section 4 of the Act, expressly referring to all other lands erroneously certified or patented to any railroad company, provides that citizens who had purchased such lands in good faith should be entitled to the lands so purchased and to patents therefor issuing directly from the United States, and that the only remedy of the government should be an action against the railroad company for the government price of similar lands. It will be observed that this protection is not granted to simply

bona fide purchasers (using that term in the technical sense), but to those who have one of the elements declared to be essential to a *bona fide* purchaser, to wit, good faith. It matters not what constructive notice may be chargeable to such a purchaser if, in actual ignorance of any defect in the railroad company's title and in reliance upon the action of the government in the apparent transfer of title by certification or patent, he has made an honest purchase of the lands. The plain intent of this section is to secure him the lands, and to reinforce his defective title by a direct patent from the United States, and to leave to the government a simple claim for money against the railroad company. It will be observed that the technical term "*bona fide* purchaser" is not found in this section, and while it is provided that a mortgage or pledge shall not be considered a sale so as to entitle the mortgagee or pledgee to the benefit of the Act, it does secure to every one who in good faith has made an absolute purchase from a railroad company protection to his title irrespective of any errors or mistakes in the certification or patent. *U. S. v. Winona, etc., R. Co.*, (1897) 165 U. S. 463.

Mortgage — foreclosure — sale. — A railroad company conveyed the legal title to lands certified under its grant as earned, in trust for its bondholders. A subsequent mortgage was foreclosed and the railroad company's equity of redemption was sold, under which circumstances the title was left in the trustees subject to the first bondholders' rights. The court held that this sale extinguished the title of the original grantee, and the trustees were taken out of the proviso of the above Act, which excepts mortgages from being considered as a sale, for the purpose of the Act; and the trustees and purchaser of the equity of redemption were *bona fide* purchasers under the above Act and the Act of March 2, 1896, sec. 1. *U. S. v. Flint, etc., R. Co.*, (*C. C. A. 1899*) 95 Fed. Rep. 551.

Unearned lands purchased after date of Act. — The fourth section of the Adjustment Act of 1887 has no reference to any unearned lands purchased after the date of that Act

from a company to whom they have never been certified or patented, although if it had kept its engagement with the state and completed the road, in due time, it could have acquired an interest in them; and where the state by legislative enactment resumed the title it acquired from the United States, and afterwards relinquished its interest to the United States—all before the passage of the Adjustment Act—a party could not, within the meaning of the Act, and after its passage, have become a purchaser in good faith. *Knepper v. Sands*, (1904) 194 U. S. 476.

Finding of good faith of purchasers.—Where the land department finds that a party is a purchaser in good faith, the finding will not be disturbed unless it clearly appears to have been founded on some construction of the law that cannot be sustained. *Linkawiler v. Schneider*, (1899) 95 Fed. Rep. 203.

Pleading.—Where a purchaser from a railroad company sued the company for breach of warranty, and the railroad company alleged that the purchaser was entitled under the Act of March 3, 1867, sec. 4, to the land on making proof of his purchase at the land office, also that the purchaser was entitled to purchase land under section 5, the court held that the railroad company's answer was demurrable as it did not allege that the land belonged to the class governed by the Act. *Montgomery v. Northern Pac. R. Co.*, (1895) 67 Fed. Rep. 445.

Decree.—A suit was brought to annul certain patents and the certification of lands not patented. Purchasers from the company were made parties defendant. The decree which canceled the patents and certifications saved the rights of the purchasers. Pending the appeal in the Supreme Court of the United States, the Act of March 2, 1896, was passed. The court affirmed the decree, allowing the government to proceed in the Circuit Court to a final decree as to the purchasers. It was held that the Act of March 2, 1896, was applicable to the purchasers of lands patented to the railroad, whose titles

were confirmed by that Act, and their titles would be recognized by the final decree, provided a showing of good faith was made, and regardless of citizenship. It was also held that in regard to land which had been certified and not patented to the railroad company, a decree against purchasers not shown to be citizens or to have declared their intention in respect to becoming citizens would be entered in favor of the government. *U. S. v. Southern Pac. R. Co.*, (1898) 88 Fed. Rep. 832, *affirmed* (C. C. A. (1899) 98 Fed. Rep. 45, *affirmed* in part (1902) 184 U. S. 49.

Recovery of price.—The provision requiring the company to pay to the United States an amount equal to the government price of similar lands was within the constitutional power of Congress to enact. Where it was contended that Congress could not make the railroad company a debtor by a retrospective Act, the court said: "The answer is that the company, having sold and disposed of the government's property without right, was, regardless of the statute, liable to the government, if not for its true value, certainly for the amount of money received by the company therefor, and which it had no right to retain; for, having received the land illegally, and disposed of it for money, there was an implied contract on the part of the company to pay over the money so received to its true owner. * * * There was no attempt on the part of Congress to add to the company's legal or equitable liability, but surely it could waive the whole or any part of the right of the United States without any valid objection on the part of the company. And by the legislation under consideration Congress did waive a part of the government's right in the present case; for it appears that all of the lands in suit that were conveyed by the company were sold by it for sums in excess of the government price for such lands." *U. S. v. Southern Pac. R. Co.*, (1902) 117 Fed. Rep. 544.

SEC. 5. [Rights of purchasers from railroads of coterminous lands not within grants.] That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: *Provided*, That all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor:

Provided further, That this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases. [24 Stat. L. 557.]

The main purpose of this Act was to relieve *bona fide* purchasers from railway companies of forfeited lands by permitting such purchasers or settlers to perfect their entries upon compliance with the public-land laws. *San José Land, etc., Co. v. San José Ranch Co.*, (1903) 189 U. S. 177, *affirming* (1900) 129 Cal. 673.

Although a settler is favored in law, however, it does not follow therefrom that he is the only one whose equities are to be considered. Congress, by the above section, made provision for his protection — such provision as it deemed sufficient. While it gave to purchasers from the railway company a preferential right of purchase, it excepted therefrom lands which at the time of such purchase "were in the *bona fide* occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned." In other words, it said that no purchaser from the railway company should have a preferential right of purchasing any lands which at the time of his dealing with the railway company were in the hands of a *bona fide* settler under the laws of the United States, unless such settler should voluntarily abandon his settlement. As between a purchaser from the railway company and a settler on the lands, the settler was given the prior right. Where a party settled upon lands and put improvements thereon with knowledge of another's superior rights, the court said, "He does not come within the letter of the statute, nor does he come within the reach of any reasonable equities." *Gertgens v. O'Connor*, (1903) 191 U. S. 237.

Contests between private claimants — intent of legislation. — "In the settlement and readjustment of the railroad land grants, as provided for in the Acts of Congress * * *, it is the legislative intent that the government should act liberally with all persons who had in good faith purchased portions of the unearned lands from the railroad companies, and that the absolute or so-called technical right of the government to insist upon the restoration to the public domain of all lands not earned by the railway company under the terms of the grant to it would be waived in favor of good-faith purchasers from the railway company, but that it is not the intent of these Acts to declare that the equities and rights of third parties shall be disregarded in favor of such purchasers. In other words, when the issue is between individual claimants it was not the legislative intent to declare that purchasers from the defaulting railway companies of unearned lands should be favored over other good-faith claimants without regard being paid to the actual equities of such parties, but, on the contrary, in each the respective rights of

such contesting claimants should be settled according to well-established and recognized rules of equity and public policy." *Benner v. Lane*, (1902) 116 Fed. Rep. 407.

Citizenship. — Where it was contended that a party was an innocent purchaser for value of lands unlawfully selected by a railroad and that, therefore, he and his grantees were entitled to be protected in their title by virtue of the Act of March 3, 1887, the court said: "It is a sufficient answer to this contention that this defense was not set up in the state courts, and that it does not appear anywhere in the record that Clark, to whom the railroad company conveyed, or any subsequent grantee in the chain of title, was a citizen of the United States, or had declared his intention to become a citizen, and hence the Act of 1887, which purports to confirm alone the titles of citizens or those who have declared their intention to become citizens, has no application." *Clark v. Herington*, (1902) 186 U. S. 206.

A corporation is a citizen within the meaning of the above Act. *Ramsay v. Tacoma Land Co.*, (1903) 31 Wash. 351.

Aliens. — Congress expressly limited the privileges granted by the Act of 1887 to citizens of the United States or those who had declared their intention to become such. It excluded aliens, and in so doing acted in harmony with the general scope of public land legislation. Although in the Act of 1896, in respect to patented lands, Congress recognized aliens as entitled to the benefits of a *bona fide* purchase, the fact, however, that in a later statute, and in respect to a different class of lands, it extended certain privileges, is no reason for ignoring the limitations contained in his Act as applied to the lands covered by it. *U. S. v. Southern Pac. R. Co.*, (1902) 184 U. S. 49, *affirming* in part (*C. C. A. 1899*) 98 Fed. Rep. 45, *affirming* (1898) 88 Fed. Rep. 832.

Subsequent grantee — qualifications. — "The ruling of the department has been that the right of purchase from the government conferred by this section is not limited to the immediate purchaser from the company, but may be exercised by a subsequent grantee, who has the necessary qualifications, and that in such case it is immaterial what were the qualifications of such purchaser." *U. S. v. Southern Pac. R. Co.*, (1902) 184 U. S. 49, (1898) 88 Fed. Rep. 832.

Necessity for conveyance to company or to some one for its use. — "To give the preference to the purchaser under the provisions of this section, it must appear that at the date of the sale to him by the railway company the title to the land purchased had been conveyed by the United States to the company, or to some one for its use and benefit. A conveyance by the United States of land to a third party as a trustee, to be held by

the trustee, in order to ascertain whether the railway company will earn the lands, it being the duty of the trustee to reconvey the lands to the United States if the conditions of the grant are not performed, is not a conveyance to the company or for its use, within the meaning of section 5 of the Readjustment Act." *Manley v. Tow*, (1901) 110 Fed. Rep. 241; *Benner v. Lane*, (1902) 116 Fed. Rep. 407.

Upon the showing of a mere right to purchase granted by the above Act, the plaintiff was held not to be entitled to demand that its title be adjudged good and valid, and that the defendant had no estate or interest in the land, or that it should be enjoined from asserting any claim adverse to the plaintiff, or that it should recover possession of the land, with the right of ousting the defendant from improvements which its predecessors had made thereon, where the plaintiff never sought to take advantage of the above Act, or ever applied to purchase the lands, or made payment to the United States, or did anything whatever before the beginning of suit to indicate that this statute was relied upon. *San José Land, etc., Co. v. San José Ranch Co.*, (1903) 189 U. S. 177.

Notwithstanding mere errors or irregularities in the proceedings of the land department, the above Act and the Act of March 2, 1896, confirmed the title of purchasers from a railroad of lands certified or patented to or for its benefit, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the limits, excepted from their operation; provided that they purchased in good faith, paid value for the lands, and that the lands were public lands in the statutory sense of the term, and free from individual or other claims. *U. S. v. Winona, etc., R. Co.*, (1897) 165 U. S. 463. See also *U. S. v. Flint, etc., R. Co.*, (C. C. A. 1899) 95 Fed. Rep. 551.

Facts authorizing confirmation of title.—Certain parties received a conveyance of land in controversy from a railroad company prior to the issuance of a patent to the company, and the land was the numbered sections prescribed in its grant; it was also coterminous with the constructed parts of the road. At the time the parties acquired the land it was not occupied by adverse claimants, as complainants' ancestor had relinquished the possession thereof a year and a half previously under circumstances which were regarded as voluntary relinquishment. It was held that the fifth section of the Act of March 3, 1887, covered the case in all its essential features and entitled the parties to a confirmation of their title. *Wahstaff v. Collins*, (C. C. A. 1899) 97 Fed. Rep. 3.

Bona fide purchasers.—A party who for a consideration secured an option from a railroad company, and relying upon the option expended money and labor in procuring settlers, was held to be a *bona fide* purchaser within the purview of the above Act. *Gertgens v. O'Connor*, (1903) 191 U. S. 237. In this case the court said: "The scope of sec-

tion 5 is disclosed by its opening words, 'where any said company shall have sold.' In case of a sale, certain privileges are given upon certain conditions. Nowhere does it provide as one of those conditions that the company shall have received full, or indeed any, payment. If there is a sale it is sufficient. Why in a remedial statute may not the word include a sale upon conditions, one in which the proposed buyer has an election to accept the company's promise? The section does not attempt to relieve any one whose transactions with the railway company were not in good faith. The term '*bona fide* purchaser' is used in the statute; but, as we pointed out in *U. S. v. Winona, etc., R. Co.*, (1897) 165 U. S. 463, 480, 481, not in any technical sense, but simply as demanding good faith in the transactions between the individual and the company. It is true that the parties who, in that case, had dealt with the company had in fact purchased and paid value, and it was unnecessary to consider anything more than the effect of such transactions. But still it was distinctly held that the term '*bona fide* purchaser' was not intended in any technical sense, but only as one implying good faith." The court also said: "The rulings of the land department have been along the line of a recognition of the fact that attempts in good faith by a party to obtain from a railroad company for *bona fide* settlements lands believed to belong to it or expected to be acquired by it, present cases which were intended to be included within the Act of 1887, and entitled to its protection."

Where a mortgage was made subsequent to the Act of March 3, 1887, one claiming under the mortgage is not entitled to the rights of a *bona fide* purchaser which are conferred by the Act. *U. S. v. Southern Pac. R. Co.*, (1896) 76 Fed. Rep. 134.

Where a party purchased for a valuable consideration land from a railroad without notice that a claim was made to the land by the United States and entered into possession of the land, he was held to be a *bona fide* purchaser within the meaning of the Act and entitled to its protection. *U. S. v. Southern Pac. R. Co.*, (1896) 76 Fed. Rep. 134.

Where parties purchased land from a railroad company knowing that the land was at the time mineral land, they were held not to be *bona fide* purchasers. *U. S. v. Central Pac. R. Co.*, (1898) 84 Fed. Rep. 218.

Anterior to any claim of right by the railroad company, by virtue either of filing its map of definite location or of surveying and staking upon the ground its line, a pre-emption filing was placed upon the land, which was never canceled. There remained, therefore, on the record until after the certification to the state a claim of a right to pre-empt. The party making this claim continued in possession by himself or tenant until not only the construction of the railroad, but until after the conveyance by the railroad company to the land company, and so remained in possession until suit of ejectment was brought by the land company in

1877. On the strength of these facts the Court of Appeals was of opinion that the land company could not be considered as one purchasing in good faith from the railroad company; that it took its conveyance with notice, from possession, of all the rights and claims of the party so in possession, and therefore that it did not bring itself within the protecting clauses of the Act of March 3, 1887, ch. 376, 24 Stat. L. 556, and there was nothing to stay the right of the government to have this certification so erroneously issued canceled. With that conclusion the United States Supreme Court concurred. *Winona, etc., R. Co. v. U. S.*, (1897) 165 U. S. 485, *distinguishing* *U. S. v. Winona, etc., R. Co.*, (1897) 165 U. S. 463.

Where a party was in occupation of lands as a homesteader, one who purchased unearned and un conveyed lands from a railroad company which had forfeited its rights, and who had actual knowledge of the occupancy of the homesteader, is not a *bona fide* purchaser as against the homesteader within the meaning of the above Act. *Benner v. Lane*, (1902) 116 Fed. Rep. 407.

Speculative transaction.—While, according to the construction of the land department, the grantee of a purchaser from a railroad company is entitled to invoke the protection of this statute, yet the grantee must be one who is himself a *bona fide* purchaser and not one whose purchase was simply for the purpose of acquiring title from the government for the benefit of a foreigner. In *U. S. v. Southern Pac. R. Co.*, (1902) 184 U. S. 49, the testimony plainly showed a purely speculative transaction. The purchaser paid nothing. His agreement was to protect the company, in the original purchase of its title, or rather in its purchase money, and then make what he could over and above that. He did not buy with the purpose of holding the land, but was simply engaged in an effort to secure to the original purchaser from the railroad company the money it had invested in the purchase, advancing in that effort some money in the way of taxes and devoting his legal services to that end, and hoping to make a profitable speculation out of the matter. Under these circumstances the court held that the party was not a *bona fide* purchaser within the meaning of the Act.

A mere licensee is not a *bona fide* purchaser within the meaning of the above Act, where no contract of sale was made and the railroad company expressly refused to enter into such a contract. *U. S. v. Holmes*, (1900) 105 Fed. Rep. 41, *judgment reversed* (C. C. A. 1902) 118 Fed. Rep. 995.

Homestead entry of unearned lands—good faith.—Where a homesteader had knowledge that the terms of a railroad grant had not been complied with, nor the land earned thereunder, and good reason to believe that

it would soon be restored to the public domain, as in fact it was, his good faith is not impeached by the fact that the land when settled upon was within the limits of a railroad grant, under which it had been withdrawn from market. *Manley v. Tow*, (1901) 110 Fed. Rep. 241; *Benner v. Lane*, (1902) 116 Fed. Rep. 407.

Where a party purchased in good faith from a railroad company and applied within a reasonable time to purchase the land after the land department's decision denying the railroad's right to the land, it was held that the party had a preference right over a party who made a homestead entry within four months after notice that the railroad's rights were canceled and with knowledge of all the facts. *Ramsay v. Tacoma Land Co.*, (1903) 31 Wash. 351.

Settlement not protected.—A party attempted to enter and settle in lands under the homestead laws, but was rejected by the land department and threatened away by one of the defendants who purchased the land from the railroad. The defendants were permitted to purchase the land under the Act of March 3, 1887. The court held that the attempted settlement was not protected by the provisions of the above Act. *Norton v. Evans*, (C. C. A. 1897) 82 Fed. Rep. 804.

Determination by land department.—The land department's determination that a party was a *bona fide* purchaser was held to be conclusive in *Brett v. Meisterling*, (1902) 117 Fed. Rep. 768, and the court refused to hold that as a matter of law the department committed error in issuing a patent where at the time the party contracted with the railway company to receive his deed for the land no one was in possession thereof.

Where it was claimed that certain land in dispute did not fall within the limits of a railway grant and, therefore, the Readjustment Act of March 3, 1887, was not applicable, it was held that the action of the land department was final upon the question of the location of the limiting lines of the grant, consequently, the rights of the parties were to be determined upon the theory that the land in dispute fell within the limits of the railroad grant. *Brett v. Meisterling*, (1902) 117 Fed. Rep. 768.

The word "grant," in the fifth section of the Act of March 3, 1887, should be construed to include (as it does in the preceding sections of the Act) both the primary and indemnity limits. (1887) 19 Op. Atty.-Gen. 68.

Breach of warranty—defense.—In *Montgomery v. Northern Pac. R. Co.*, (1895) 67 Fed. Rep. 446, it was held that the fact that the plaintiff purchased the land under the Act of March 3, 1887, sec. 5, was no defense to an action against the railroad company for a breach of warranty.

SEC. 6. [Rights of purchasers of land sold for taxes.] That where any such lands have been sold and conveyed, as the property of any railroad company, for the State and county taxes thereon, and the grant to such company has been thereafter forfeited, the purchaser thereof shall have the prior right,

which shall continue for one year from the approval of this act, and no longer, to purchase such lands from the United States at the Government price, and patents for such lands shall thereupon issue. *Provided*, That said lands were not, previous to or at the time of the taking effect of such grant, in the possession of or subject to the right of any actual settler. [24 Stat. L. 558.]

SEC. 7. [*Limitation of quantity of lands to be conveyed.*] That no more lands shall be certified or conveyed to any State or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which such State corporation or individual would be rightfully entitled. [24 Stat. L. 558.]

An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes.

[Act of Sept. 29, 1890, ch. 1040, 26 Stat. L. 496.]

[SEC. 1.] [*Forfeiture and restoration to public domain of unearned lands granted to railroads.*] That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed, and in operation, for the construction or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain: *Provided*, That this act shall not be construed as forfeiting the right of way or station grounds of any railroad company heretofore granted. [26 Stat. L. 496.]

The effect of this Act was to divest the legal title to lands out of the state and to invest them in the government, and where a certificate or patent is subsequently issued for the lands the patentee obtains the legal and equitable title. *Williams' Invest. Co. v. Pugh*, (1902) 137 Ala. 346; *Dudley v. Gallops*, (1900) 128 Ala. 236; *Sullivan v. Van Kirk Land, etc., Co.*, (1899) 124 Ala. 225; *McCarver v. Herzberg*, (1898) 120 Ala. 523; *Northern Pac. R. Co. v. Miller*, (1898) 20 Wash. 21.

Since the Northern Pacific Railroad Company never made a definite location of any line of road between Portland and Walula, the original land grant never took effect as to any land between those places; therefore, lands in controversy which were contiguous to the line built from Portland to Tacoma, within the grant of the joint resolution of May 31, 1870, were public lands of the United States, not reserved, sold, granted or otherwise appropriated, and by said joint resolution the same were granted to the company upon conditions which having been performed the title of the company and its vendees became vested and protected, and not affected by the above Act. *Northern Pac. R. Co. v. Balthazar*, (1897) 82 Fed. Rep. 270.

Effect of Act on condition in granting Act.—It is clear implication from the action of Congress in the Forfeiture Act of Sept. 29, 1890, that Congress did not intend to insist on any condition subsequent which existed in

the granting Act. *U. S. v. Tennessee, etc., R. Co.*, (1895) 71 Fed. Rep. 71.

Lands restored to previous condition.—Under the Act of Sept. 29, 1890, it was the purpose of Congress to restore the lands to the public domain in precisely the same condition that they were in before the granting Acts were passed. *Johnston v. Morris*, (C. C. A. 1896) 72 Fed. Rep. 890.

Forfeiture is for benefit of government only.—*Oregon, etc., R. Co. v. U. S.*, (C. C. A. 1896) 77 Fed. Rep. 67, *affirmed* (1900) 176 U. S. 23; *Eastern Oregon Land Co. v. Wilcox*, (C. C. A. 1897) 79 Fed. Rep. 719, *affirmed* (1900) 176 U. S. 51.

Right of railroad's grantee to sue for purchase price of lands.—Where a claimant entered lands within the boundaries of a railroad grant and paid the price fixed by statute and both parties regarded that as the value of the land, but the government did not guarantee performance on the part of the grantee, a suit cannot be maintained because Congress

clearly was not intended to be limited to the beneficiary railroads, and it does not refer to grants of rights of way by Congress over lands after the grant and before the Act of forfeiture. Corporations which through condemnation proceedings in the state courts acquire a right of way after the grant and before the forfeiture across donated lands are protected. *Choate v. Southern R. Co.*, (1898) 119 Ala. 611.

annulled the grant in consequence of the railroad company's inaction. *Foster v. U. S.*, (1897) 32 Ct. Cl. 170.

Lands opposite completed roads.—The above Act does not apply to lands opposite to

completed roads, consequently lands so situated were not forfeited by the Act. *U. S. v. Tennessee, etc., R. Co.*, (1900) 176 U. S. 242, reversing judgment in (*C. C. A.* 1897) 81 Fed. Rep. 544.

SEC. 2. [*Preference right to homestead entry of settlers on forfeited lands.*] That all persons who, at the date of the passage of this act, are actual settlers in good faith on any of the lands hereby forfeited and are otherwise qualified, on making due claim on said lands under the homestead law within six months after the passage of this act, shall be entitled to a preference right to enter the same under the provisions of the homestead law and this act, and shall be regarded as such actual settlers from the date of actual settlement or occupation; and any person who has not heretofore had the benefit of the homestead or pre-emption law, or who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws, may make a second homestead entry under the provisions of this act. The Secretary of the Interior shall make such rules as will secure to such actual settlers these rights. [26 Stat. L. 496.]

Amendment.—See the Act of Feb. 18, 1891, ch. 244, *infra*, p. 445.

Where a party was and had been in possession of public lands open to settlement pursuant to the Forfeiture Act of Congress approved Sept. 29, 1890, the court held that the party was entitled to maintain an action of ejectment against another party who made a peaceable entry upon the land and who intended to enter the same as a homestead under the laws of the United States, but who did not connect herself with the government title through the homestead laws or otherwise. *Rourke v. McNally*, (1893) 98 Cal. 291.

After an entry and settlement of lands it was held that a railroad could not make an entry on lands under the Act of March 3, 1875, to acquire a right of way. *Johnson v. Bridal Veil Lumbering Co.*, (1893) 24 Oregon 182.

Right to purchase as asset in bankruptcy.—The equitable owner of a certain tract of land was a party whose equitable title consisted of the right to purchase the land from the government of the United States under the above Act. Subsequently the party filed a petition and obtained a discharge in bankruptcy. Judgment creditors brought proceedings to revoke his discharge in bankruptcy because the land and a crop thereon grown were not listed in the schedule of assets. It appeared that the bankrupt took possession of the land for the purpose of establishing

and claiming a right to purchase it from the Northern Pacific Railroad Company in case the railroad company should acquire title to it from the United States. The railroad grant was afterward forfeited and a certain party made a homestead entry for the land. The bankrupt contested this entry, which contest was decided adversely to him. Subsequently the homesteader took possession of the land, established his residence and so continued in the actual occupancy of the premises until after the time the bankrupt filed his petition and after the time of his discharge. The commissioner of the general land office reversed the decision of the register and receiver in denying the bankrupt's claim to the land, and decided the contest against the homesteader. The decision of the commissioner was sustained by the secretary of the interior. The bankrupt informed his attorney of his relation to the land in question and took his advice as to including the land in his schedule of assets. The attorney advised him that he had no such right or interest as would pass by assignment to his trustee and as constituting an asset of his estate. It also appeared that the bankrupt gave to his trustee full information in respect to the matter, so that there was no fraud or concealment on his part. The court held that the circumstances did not warrant a revocation of the discharge. *In re Hansen*, (1901) 107 Fed. Rep. 252.

SEC. 3. [*Right of purchasers from State or railroad to purchase, or to remove crops, etc.*] That in all cases where persons being citizens of the United States, or who have declared their intentions to become such, in accordance with the naturalization laws of the United States, are in possession of any of the lands affected by any such grant and hereby resumed by and restored to the United States, under deed, written contract with, or license from, the State or corporation to which such grant was made, or its assignees, executed prior to January first, eighteen hundred and eighty-eight, or where persons may have settled said lands with bona fide intent to secure title

thereto by purchase from the State or corporation when earned by compliance with the conditions or requirements of the granting acts of Congress they shall be entitled to purchase the same from the United States, in quantities not exceeding three hundred and twenty acres to any one such person, at the rate of one dollar and twenty-five cents per acre, at any time within two years from the passage of this act, and on making said payments to receive patents therefor, and where any such person in actual possession of any such lands and having improved the same prior to the first day of January, eighteen hundred and ninety, under deed, written contract, or license as aforesaid, or his assignor, has made partial or full payments to said railroad company prior to said date, on account of the purchase price of said lands from it, on proof of the amount of such payments he shall be entitled to have the same, to the extent and amount of one dollar and twenty-five cents per acre, if so much has been paid, and not more, credited to him on account of and as part of the purchase price herein provided to be paid the United States for said lands, or such persons may elect to abandon their purchases and make claim on said lands under the homestead law and as provided in the preceding section of this act: *Provided*, That in all cases where parties, persons, or corporations, with the permission of such State or corporation, or its assignees, are in the possession of and have made improvements upon any of the lands hereby resumed and restored, and are not entitled to enter the same under the provisions of this act, such parties, persons, or corporations shall have six months in which to remove any growing crop, and within which time they shall also be entitled to remove all buildings and other movable improvements from said lands: *Provided further*, That the provisions of this section shall not apply to any lands situate in the State of Iowa on which any person in good faith has made or asserted the right to make a pre-emption or homestead settlement: *And provided further*, That nothing in this act contained shall be construed as limiting the rights granted to purchasers or settlers by "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March third, eighteen hundred and eighty-seven, or as repealing, altering, or amending said act, nor as in any manner affecting any cause of action existing in favor of any purchaser against his grantor for breach of any covenants of title. [26 Stat. L. 496.]

Extension of time to purchaser.—See amendment by Act of Feb. 18, 1891, ch. 244, and statutes following, *infra*, p. 445.

Who are licensees.—Where a party purchased and improved land granted to a railroad, and received from the vendor company a postal card acknowledging the receipt of the application to purchase, stating that the same had been placed on file, and briefly describing the character of settlement or improvement necessary to be made in order to obtain a preference right of purchase from the company, it was held that the party would, independently of any rights the vendor might have had, be deemed to have been a licensee of the company within the above Act, where he caused the land to be fenced and plowed, and cropped it for several years and had possession thereof by a tenant, it further appearing by a resolution of the company that such persons would have been deemed by it to be licensees, if the land had

been forfeited. *Wiseman v. Eastman*, (1899) 21 Wash. 163.

Separate estate of husband.—Where under a preference right given to a party in possession of lands a surviving husband purchased lands which had been forfeited, it was held that the purchase would give him a separate estate in the lands, even if the land was taken possession of by both husband and wife under the conveyance from the railroad company during the existence of the community. *Carratt v. Carratt*, (1903) 32 Wash. 517.

The phrase "are in possession" does not contemplate an actual settlement in the case of licensees. Possession by a tenant is sufficient. *Wiseman v. Eastman*, (1899) 21 Wash. 163.

Federal question—jurisdiction of United States courts.—Where the jurisdiction of the federal court was invoked on the ground that a federal question was involved in the

case, where a bill was filed against certain parties claiming under the Act of Sept. 29, 1890, but in the complainant's statement of his controversy with the defendant as set forth in the bill, it did not appear that the dispute arose as to the meaning of the home-

stead laws or as to the Act of Sept. 29, 1890, the court held that the trial of the question involved only an investigation of the facts and that a federal court had no jurisdiction of the case made. *Butler v. Shafer*, (1895) 67 Fed. Rep. 161.

SEC. 4. [*Repeal of special acts.*]

This section repealed certain grants to Iowa and Minnesota. See 10 Stat. L. 9; 13 Stat. L. 74, 98, 527; 14 Stat. L. 88. It reads as follows:

"SEC. 4. That section five of an Act entitled 'An act for a grant of lands to the State of Iowa in alternate sections to aid in the construction of a railroad in said State,' approved May seventeenth, eighteen hundred and sixty-four, and section seven of an act entitled 'An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes,' approved March third, eighteen hundred and sixty-five, and also section five of an act entitled 'An act making an additional grant of lands to the State of Minnesota in alternate sections to aid in the construction of railroads in said State,' approved July fourth, eighteen hundred and

sixty-six, so far as said sections are applicable to lands embraced within the indemnity limits of said grants, be, and the same are hereby, repealed; and so much of the provisions of section four of an act approved June second, eighteen hundred and sixty-four, and entitled 'An act to amend an act entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," approved May fifteenth, eighteen hundred and fifty-six, be, and the same are hereby, repealed so far as they require the Secretary of the Interior to reserve any lands but the odd sections within the primary or six miles granted limits of the roads mentioned in said act of June second, eighteen hundred and sixty-four, or the act of which the same is amendatory.' [26 Stat. L. 497.]

SEC. 5. [*Relief of certain assignees of Northern Pacific R. R. Co.*]

This section is special, providing for relief of certain assignees of the Northern Pacific R. R. Co.

SEC. 6. [*Forfeited lands not to inure to the benefit of original grantees.*]

That no lands declared forfeited to the United States by this act shall by reason of such forfeiture inure to the benefit of any State or corporation to which lands may have been granted by Congress, except as herein otherwise provided; nor shall this act be construed to enlarge the area of land originally covered by any such grant, or to confer any right upon any State, corporation or person to lands which were excepted from such grant. Nor shall the moiety of the lands granted to any railroad company on account of a main and a branch line appertaining to uncompleted road, and hereby forfeited, within the conflicting limits of the grants for such main and branch lines, when but one of such lines has been completed, inure by virtue of the forfeiture hereby declared, to the benefit of the completed line. [26 Stat. L. 498.]

SEC. 7. [*Relief of certain purchasers from United States of lands granted to Gulf and Ship Island R. R. Co.*]

This provision is special, and for that reason is omitted.

SEC. 8. [*Relief of Mobile and Girard and Alabama and Florida R. R. Cos., and purchases of lands granted.*]

This section is special legislation, and for that reason is omitted.

An act to amend an act entitled an act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes.

[Act of Feb. 18, 1891, ch. 244, 26 Stat. L. 764.]

[*Forfeited railroad lands — extension of time limit for homestead entries or purchases.*] That an act entitled "An act to forfeit certain lands hereto-

fore granted for the purpose of aiding in the construction of railroads, and for other purposes," approved September twenty-ninth, eighteen hundred and ninety, be, and the same is hereby, amended so that the period within which settlers, purchasers, and others under the provisions of said act may make application to purchase lands forfeited thereby or to make or move to perfect any homestead entries which are preserved or authorized under said act when such period begins to run from the passage of the act shall begin to run from the date of the promulgation by the Commissioner of the General Land Office of the instructions to the officers of the local land offices, for their direction in the disposition of said lands: *Provided*, That nothing herein shall extend any time or enlarge any rights given by said act to any railroad company. [26 Stat. L. 764.]

An act to amend an act entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes."

[Act of June 26, 1892, ch. 133, 27 Stat. L. 59.]

[*Forfeited railroad lands — extension of time to purchase.*] That section three of an act entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," be, and the same is, amended so as to extend the time within which persons actually residing upon lands forfeited by said act shall be permitted to purchase the same in the quantities and upon the terms provided in said section at any time within three years from the passage of said act. [27 Stat. L. 59.]

The Act referred to in the text is the Act of Sept. 29, 1890, ch. 1040. Section 3 of that Act is given *supra*, p. 443.

An act to amend an act entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes."

[Act of Jan. 31, 1893, ch. 54, 27 Stat. L. 427.]

[*Forfeited railroad lands — extension of time to purchase.*] That section three of an act entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," be, and the same is, amended so as to extend the time within which persons entitled to purchase lands forfeited by said act upon the line of the Northern Pacific Railroad Company between Wallula, Washington, and Portland, Oregon, shall be permitted to purchase the same in the quantities and upon the terms provided in said section to January first, eighteen hundred and ninety-four. [27 Stat. L. 427.]

The Act referred to in the text is the Act of Sept. 29, 1890, ch. 1040. Section 3 of that Act is given *supra*, p. 443.

An Act to amend an Act entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," approved September twenty-ninth, eighteen hundred and ninety, and the several Acts amendatory thereof.

[Act of Dec. 12, 1893, ch. 1, 28 Stat. L. 15.]

[*Forfeited railroad lands — extension of time to purchase.*] That section three of an Act entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other pur-

poses," approved September twenty-ninth, eighteen hundred and ninety, and the several Acts amendatory thereof, be, and the same is, amended so as to extend the time within which persons entitled to purchase lands forfeited by said Act shall be permitted to purchase the same, in the quantities and upon the terms provided in said section, at any time prior to January first, eighteen hundred and ninety-seven: *Provided*, That actual residence upon the lands by persons claiming the right to purchase the same shall not be required where such lands have been fenced, cultivated, or otherwise improved by such claimants, and such persons shall be permitted to purchase two or more tracts of such lands by legal subdivisions, whether contiguous or not, but not exceeding three hundred and twenty acres in the aggregate. [28 Stat. L. 15, 29 Stat. L. 4.]

This Act was amended to read as above by the Act of Jan. 23, 1896, ch. 8, 29 Stat. L. 4. The amendment consisted in the addition of the proviso above given, and the omission of the proviso in the Act as originally enacted, which was as follows:

"*Provided*, That nothing herein contained shall be so construed as to interfere with any adverse claim that may have attached to the lands or any part thereof."

The Act referred to in the text is given *supra*, p. 443.

An Act To amend an Act entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," approved September twenty-ninth, eighteen hundred and ninety, and the several acts amendatory thereof.

[Act of Feb. 18, 1897, ch. 250, 29 Stat. L. 535.]

[*Forfeited railroad lands — extension of time to purchase.*] That section three of an Act entitled "An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," approved September twenty-ninth, eighteen hundred and ninety, and the several acts amendatory thereof, be, and the same is, amended so as to extend the time within which persons entitled to purchase lands forfeited by said Act shall be permitted to purchase the same, in the quantities and upon the terms provided in said section and the amendments thereto, at any time prior to January first, eighteen hundred and ninety-nine: *Provided*, That nothing herein contained shall be so construed as to interfere with any adverse claim that may have attached to the lands or any part thereof. [29 Stat. L. 535.]

The Acts referred to in the text are given *supra*.

An act for the relief of settlers upon certain lands in the States of North Dakota and South Dakota.

[Act of Aug. 5, 1892, ch. 382, 27 Stat. L. 390.]

[*Preamble.*] Whereas under the rulings of the General Land Office the extension into Dakota Territory, now States of North Dakota and South Dakota, of the limits of the grants of land made by Congress to aid in the construction of the several lines of railroad now owned by the Saint Paul, Minneapolis and Manitoba Railway Company was denied, and in consequence of said rulings lands within the limits of the said grants in the said States have been claimed, settled upon, occupied, and improved by numerous persons in good faith under color of title or of right to do so derived from the various laws of the United States relating to the public domain, and are now claimed by them, their heirs, or assigns, and many of said lands have actually been patented to such occupants or to their grantors; and

Whereas under recent construction of said grants the said occupants, improvers, or purchasers, are liable to be evicted from their holdings: Now, therefore, for the purpose of relieving the said occupants, improvers, and purchasers of the said granted lands from the hardship of being now deprived of the same under the circumstances aforesaid,

[SEC. 1.] [*Release by St. Paul, Minneapolis, and Manitoba R. R. Co. of certain lands — titles of settlers and purchasers perfected.*] That the Secretary of the Interior shall, as soon as conveniently may be done, cause to be prepared and delivered to the said railway company a list of the several tracts which have been purchased, claimed, occupied, and improved, as stated in section two of this act, and are now claimed by such purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions. Within a reasonable time after the receipt by the said railway company of the said list, it shall execute under its corporate seal and deliver to the Secretary of the Interior its deed of conveyance releasing to the United States all its claims upon the lands described in said list, and shall also procure and cause to be released to the United States all liens and claims to said lands derived through or under said company, whereupon all right, title, and interest of the said railway company to each of such tracts shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railway company, and all qualified persons who have occupied and made improvements on said lands, as herein provided, or who have purchased said lands in good faith, their heirs and assigns, shall be permitted to perfect their titles to said lands according to law as if said grants had never been made. [27 Stat. L. 390.]

SEC. 2. [*Selections by railroad in lieu of lands released.*] That the said railway company is hereby permitted to select, in lieu of any lands forming odd-numbered sections or parts thereof situated in the State of North Dakota or in the State of South Dakota, within the ten-mile limits of a grant of lands made to the Territory of Minnesota by act of Congress, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," approved March third, eighteen hundred and fifty-seven, as amended by an act of Congress entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March third, eighteen hundred and sixty-five, and of a grant made by act of Congress entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," approved March third, eighteen hundred and seventy-one, opposite to and coterminous with such portion of said railroad as was constructed and completed within the time required by the said grant and the acts amendatory thereof for the construction and completion of the whole of said railroad, which, prior to January first, anno Domini eighteen hundred and ninety-one, any person had purchased or occupied or improved, in good faith, under color of title or right to do so, derived from any law of the United States relating to the public domain, but not including any lands within the limits of the grant, to aid in construction of the Saint Vincent branch of said road, as located under the act of March third, eighteen hundred and seventy-one, upon which any person or persons had, in good faith, settled and made or acquired valuable improvements thereon prior to March, eighteen

hundred and seventy-seven, an equal quantity of non mineral public lands, so classified as non mineral at the time of actual Government survey which has been or shall be made, of the United States not reserved and to which no adverse right or claim shall have attached or have been initiated at the time of the making of such selection lying within any State into or through which the railway owned by said railway company runs, to the extent of the lands so relinquished and released: *Provided*, That the lands to be released by said company, and in lieu of which said company shall be entitled to select other lands of equal area, shall only include lands to which, at the date of the definite location of the lines of railroad in aid of which said land grants were made, no paramount grant, sale, pre-emption, or homestead right had attached, this proviso not to be considered as in any way extending the limitation as to eighteen hundred and seventy-seven herein above provided: *And provided further*, That the tracts of land so by said company to be selected in any one body under the authority of this act shall not exceed six hundred and forty acres, and such selections shall not exceed in the aggregate sixty-five thousand acres. But said company shall not be required to relinquish any greater amount of land than it is permitted by this act to select. [27 Stat. L. 391.]

SEC. 3. [*Patents for lands selected — lists of lands — surveys.*] That upon the filing by the said railroad company, at the local land office of the land district in which any tract of land selected in pursuance of this act shall lie, a list describing the tract or tracts selected, and the payment of the fees prescribed by law in analogous cases, and the approval of the Secretary of the Interior, he shall cause to be executed, in due form of law, and deliver to said company, a patent of the United States, conveying to it the lands so selected. In case the tract so selected shall at the time of selection be unsurveyed, the list filed by the company at the local land office shall describe such tract in such manner as to designate the same with a reasonable degree of certainty, and within the period of three months after the lands including such tract shall have been surveyed, and the plats thereof filed in the local land office, a new selection list shall be filed by said company, describing such tract according to such survey; and in case such tract as originally selected and described in the lists filed in the local land office shall not precisely conform with the lines of the official survey, the said company shall be permitted to describe such tract anew, so as to produce such conformity. [27 Stat. L. 392.]

SEC. 4. [*Acceptance of act.*] That this act shall take effect and be in force from and after the time of its acceptance by the said railway company, which must be within ninety days from the approval of this act. [27 Stat. L. 392.]

"This Act was accepted by the following resolution of the board of directors of this railroad company, adopted Aug. 26, 1892:

"*Resolved*, That this company does hereby accept the provisions of that certain Act of Congress entitled 'An act for the relief of settlers upon certain lands in the States of

North Dakota and South Dakota,' approved Aug. 5, A. D. 1892; and that the secretary of this company be directed to file with the commissioner of the general land office of the United States a properly authenticated copy of this resolution." *Compilers' note*, 2 Supp. R. S. 70.

An Act To provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes.

[Act of March 2, 1896, ch. 39, 29 Stat. L. 42.]

[SEC. 1.] [*Suits to annul patents erroneously issued under railroad or wagon road grants.*] That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road

grant shall only be brought within five years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: *Provided*, That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry. [29 Stat. L. 42.]

SEC. 2. [*Claims of bona fide purchasers, how established.*] That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a bona fide purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject-matter, or at his option, as prescribed in sections three and four of chapter three hundred and seventy-six of the Acts of the second session of the Forty-ninth Congress. [29 Stat. L. 43.]

The Act here referred to is the Act of March 3, 1887, ch. 376, *ante*, p. 433.

SEC. 3. [*Claims of bona fide purchasers — investigation before suit.*] That if at any time prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified a claim or statement is presented to the Secretary of the Interior by or on behalf of any persons or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a bona fide purchaser or are bona fide purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said Department of the Interior; and if it shall appear that such person or corporation is a bona fide purchaser as aforesaid, or that such persons or corporations are such bona fide purchasers, then no such suit shall be instituted and the title of such claimant or claimants shall stand confirmed; but the Secretary of the

Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the patent was issued or certification was made for the value of the land as hereinbefore specified. [29 Stat. L. 43.]

An Act For the relief of settlers on lands granted in aid of the construction of wagon roads.

[Act of July 1, 1902, ch. 1386, 32 Stat. L. 733.]

[*Relief of settlers on wagon-road grants.*] That the provision of the Act of June twenty-second, eighteen hundred and seventy-four, entitled "An Act for the relief of settlers on railroad lands," and all Acts amendatory thereof or supplementary thereto, including the Act approved March third, eighteen hundred and eighty-seven, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," as modified or supplemented by the Act approved March second, eighteen hundred and ninety-six, entitled "An Act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes," shall apply to grants of land in aid of the construction of wagon roads. [32 Stat. L. 733.]

[NORTHERN PACIFIC RAILROAD COMPANY.]

An act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho.

[Act of Feb. 26, 1895, ch. 131, 28 Stat. L. 683.]

[SEC. 1.] [*Claims to lands granted to Northern Pacific Railroad Company to be examined — mineral lands to be excepted.*] That the Secretary of the Interior be, and is hereby, authorized and directed, as speedily as practicable, to cause all lands within the land districts hereinafter named in the States of Montana and Idaho within the land grant and indemnity land grant limits of the Northern Pacific Railroad Company, as defined by an Act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July second, eighteen hundred and sixty-four, and Acts supplemental to and amendatory thereof, to be examined and classified by commissioners to be appointed as hereinafter provided, with special reference to the mineral or nonmineral character of such lands, and to reject, cancel, and disallow any and all claims or filings heretofore made, or which may hereafter be made, by or on behalf of the said Northern Pacific Railroad Company on any lands in said land districts which upon examination shall be classified as provided in this Act as mineral lands. [28 Stat. L. 683.]

Taxation — effect of statute. — "The Act of Feb. 26, 1895, does not contain any provisions which indicate any intention on the part of Congress to relieve the lands granted from state taxation until such time as it

may be finally settled what portions thereof, if any, are mineral lands." *Myers v. Northern Pac. R. Co.*, (C. C. A. 1897) 83 Fed. Rep. 358, *affirmed* (1899) 172 U. S. 589.

SEC. 2. [*Commissioners — compensation — oath — duties — decisions — rules.*] That for the purpose of making the examination herein provided for there shall be appointed by the President of the United States, as soon as practicable after the passage of this Act, three commissioners for each of the following land districts, to-wit: The Bozeman, Helena, and Missoula land districts,

in the State of Montana, and the Cœur d'Alene land district, in the State of Idaho, at least one of whom for each district shall be a practicable miner and a resident of such district; and said persons so appointed for each district shall constitute a board of commissioners to perform within such district the duties herein prescribed. They shall each receive for their compensation ten dollars for each day they may be actually engaged in the performance of their duties, which shall include their transportation and subsistence expenses, but the total amount of compensation to be paid to each commissioner annually shall in no case exceed the sum of twenty-five hundred dollars; and their accounts shall be audited by the Secretary of the Interior and paid monthly. Before entering upon their duties each of said commissioners shall take an oath to faithfully perform the duties of his office. Said commissioners shall make examination of the lands herein mentioned within their respective districts, and may also take the testimony of witnesses as to the mineral or nonmineral character of any of said lands, and receive any other evidence relating to said matter, and shall have power to summon witnesses to appear before them, and to administer oaths; and they shall, immediately upon their appointment, proceed to examine and classify the lands herein mentioned within their respective districts, as provided in this Act, and shall fully complete said classification within the term of four years from the date of this Act. The oath of office of said commissioners shall be filed by them in the office of the Commissioner of the General Land Office. All testimony taken by said commissioners shall be reduced to writing, subscribed by the witnesses, and filed with the report of the commissioners hereinafter required. The action or decision of a majority of said commissioners in each district shall control in all matters herein provided for. That the commissioners shall perform the work of examination and classification herein directed according to such rules and regulations as the Secretary of the Interior shall prescribe. [28 Stat. L. 683.]

Right of commissioner to compensation. — Plaintiff's intestate was in 1896 appointed one of several commissioners to examine and classify lands within the land grant and indemnity land-grant limits of the Northern Pacific Railroad, with special reference to the mineral or nonmineral character of the lands within the states of Montana and Idaho, under the provisions of the above Act. On May 19, 1897, the secretary of the interior wrote to the intestate as follows: "To enable you to complete some of the work now on hand, your furlough, as telegraphed on the 17th ultimo, is hereby revoked, and you will continue on duty to the end of the fiscal year; please tender your resignation to take effect on the latter date." June 2, 1897, the commissioner of the general land office telegraphed: "Funds exhausted and your services are discontinued." The claimant's deceased replied: "I will remain here subject to orders prepared to again continue the active discharge of the duties of the office which I hold." July 1, 1897, without further instructions from the interior department, he entered upon his duties and continued to perform them till July 28, 1897. The nature of his work appeared in his weekly reports to the general land office. No objection was made by the department. July

27, 1897, he telegraphed that he had returned from the field and requested instructions in regard to his report. The reply was that his services had been previously ordered discontinued as of June 12, 1897. On these facts the court held, that where the head of a department makes a request for a resignation and it is not handed in, the officer forfeits no right, either because of his failure to resign or because requested to do so. Where the head of a department notifies an official acting under him that the fund for his employment is exhausted, it impliedly means for that fiscal year only. Where weekly reports are transmitted in good faith by an official of a department to its head in accordance with regulations, and received and filed without protest or objection and without notice that the work must cease, he is entitled to be paid. That the government finally decides not to accept work honestly done and authorized by law will not relieve it of the obligation to pay for it, though the work is not satisfactory. The government must be estopped, though it is less liable than individuals to the application of the principle of estoppel. *Knight v. U. S.*, (1900) 35 Ct. Cl. 129.

SEC. 3. [Lands to be classified as mineral — description.] That all said lands shall be classified as mineral which by reason of valuable mineral deposits

are open to exploration, occupation, and purchase under the provisions of the United States mining laws, and the commissioners in making the classification hereinafter provided for shall take into consideration the mineral discovered or developed on or adjacent to such land, and the geological formation of all lands to be examined and classified, or the lands adjacent thereto, and the reasonable probabilities of such land containing valuable mineral deposits because of its said formation, location, or character. The classification herein provided for shall be by each legal subdivision where the lands have been surveyed. If the lands examined are not surveyed, classification shall be made by tracts of such extent, and designated by such natural or artificial boundaries to identify them, as the commissioners may determine. Where mining locations have been heretofore made or patents issued for mining ground in any section of land, this shall be taken as prima facie evidence that the forty-acre subdivision within which it is located is mineral land: *Provided*, That the word "mineral," where it occurs in this Act, shall not be held to include iron or coal: *And provided further*, That the examination and classification of lands hereby authorized shall be made without reference or regard to any previous examination or report or classification thereof. [28 Stat. L. 684.]

SEC. 4. [*Surveyed lands to be first examined.*] That such of the lands herein mentioned as have been surveyed prior to the passage of this Act shall be first examined and classified as herein provided, and afterwards, and as speedily as practicable, the lands herein mentioned which have not been surveyed, until all the lands herein mentioned shall have been examined and classified, as herein provided. [28 Stat. L. 684.]

SEC. 5. [*Report of commissioners — protests — appeals — defense.*] That said commissioners shall, on or before the fifth day of each month, file in the office of the register and receiver of the land office of the land district in which the land examined and classified is situated a full report, in duplicate, in such form as the Secretary of the Interior may prescribe, showing all lands examined by them during the preceding month, and specifying clearly, by legal subdivisions, where the land is surveyed, or otherwise by natural objects or permanent monuments to identify the same, the lands classified by them as mineral lands and those classified as nonmineral; and with said report shall be filed all testimony taken and written communications received by said commissioners relating to the lands embraced in the report. The register and receiver shall file one duplicate of said report in their office, together with all accompanying testimony and papers, and the other duplicate shall be by them forwarded direct to the Secretary of the Interior, and said commissioners shall furnish to the Secretary of the Interior at any time such further or additional report or information as he may require concerning any matters relating to their duties or the performance of the same. Upon receipt of such report the register of the land office shall, at the expense of the United States, cause to be published in a newspaper of general circulation in the county in which the land is located, and in one newspaper published at the capital city of the State in which the lands may be situated, at least once a week for four consecutive weeks, notice of the classification of lands as shown by said report, and any person, corporation, or company feeling aggrieved by such classification may, at any time within sixty days after the first publication of said notice, file with the register and receiver of the land office a verified protest against the acceptance of said classification, which protest shall set forth in concise language the grounds of objection to the classification as to the particular land in said protest

described, whereupon a hearing shall be ordered by, and conducted before, the said register and receiver, under rules and regulations as near as practicable in conformity with the rules and practice of such land office in contests involving the mineral or nonmineral character of land in other cases; and an appeal from the decision of the register and receiver shall be allowed to the Commissioner of the General Land Office and the Secretary of the Interior, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That at such hearings the United States shall be represented and defended by the United States district attorney or his assistants for the judicial district in which the land is situated, unless the Secretary of the Interior shall detail some proper officer of the Department of the Interior for that purpose. The compensation for such service shall not exceed ten dollars per day for each day's actual service before the register and receiver, to be paid out of the fund provided for the examination and classification of said mineral lands. [28 Stat. L. 684.]

SEC. 6. [*Entry, etc., of classification on land records.*] That as to the lands against the classification whereof no protest shall have been filed as hereinbefore provided, the classification, when approved by the Secretary of the Interior, shall be considered final, except in case of fraud, and all plats and records of the local and general land offices shall be made to conform to such classification. All lands so classified as above without protest, and the classification whereof is disapproved by the Secretary of the Interior, and all lands whereof the classification has been invalidated for fraud, shall be subject to hearing and determination in such manner as the Secretary of the Interior may prescribe. And as to all such lands, and as to the lands against the classification whereof protests may be filed, the final ruling made after the day set for hearing shall determine the proper classification; and all records of the local and general land offices shall be made to conform to the classification as determined by such final ruling, and all costs of such hearings shall be paid by the unsuccessful party, under such rules as the Secretary of the Interior may prescribe; and the Secretary of the Interior is hereby authorized to establish such rules and regulations as may be necessary to carry into effect the true intent and provisions of this Act as speedily as practicable. [28 Stat. L. 685.]

SEC. 7. [*Only patents for nonmineral lands to be issued to Northern Pacific Railroad.*] That no patent or other evidence of title shall be issued or delivered to said Northern Pacific Railroad Company for any land in said land districts until such land shall have been examined and classified as nonmineral, as provided for in this Act, and such patent or other evidence of title shall only issue then to such land, if any, in said land districts as said company may be, by law and compliance therewith and by the said classification, entitled to, and any patent, certificate, or record of selection, or other evidence of title or right to possession of any land in said land districts, issued, entered, or delivered to said Northern Pacific Railroad Company in violation of the provisions of this Act shall be void: *Provided*, That nothing contained in this Act shall be taken or construed as recognizing or confirming any grant of land or the right to any land in the said Northern Pacific Railroad Company, or as waiving or in any wise affecting any right on the part of the United States against the said Northern Pacific Railroad Company to claim a forfeiture of any land grant heretofore made to said company. [28 Stat. L. 686.]

SEC. 8. [*Appropriation for expenses — estimates.*] That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated,

the sum of twenty thousand dollars, or so much thereof as may be necessary, to be expended to carry into effect the provisions of this Act, the same to be paid out upon the order of the Secretary of the Interior; and the Secretary of the Interior is hereby required to embrace in the annual estimates submitted to Congress for appropriations for the Interior Department a sufficient sum to pay the said commissioners for the fiscal year next ensuing, and annually thereafter until the classification of lands required by this Act has been fully accomplished. [28 Stat. L. 686.]

[SEC. 1.] [*Time for classification extended.*] * * * The time for the completion of the classification of lands within the land-grant and indemnity land-grant limits of the Northern Pacific Railroad Company, authorized by the Act of Congress entitled "An Act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho," approved February twenty-sixth, eighteen hundred and ninety-five, and the Acts supplementary thereto, is hereby extended to and including the thirty-first day of October, eighteen hundred and ninety-nine, on or before which date the work of the commissioners shall be completed and the said commissioners be discharged. * * * [30 Stat. L. 1096.]

This is from the Sundry Civil Appropriation Act of March 3, 1899, ch. 424.

[SEC. 1.] [*Commissioners—appointment—compensation.*] * * * For compensation of the twelve commissioners appointed under the Act of February twenty-sixth, eighteen hundred and ninety-five, to examine and classify certain lands within the land-grant and indemnity land-grant limits of the Northern Pacific Railroad Company, in the States of Montana and Idaho, with special reference to the mineral or non-mineral character of such lands, thirty thousand dollars: *Provided*, That said commissioners shall be paid at the rate of ten dollars a day each while actually engaged in the performance of their duties, which amount shall include their transportation and subsistence expenses, and that the total amount of compensation to be paid to each commissioner annually shall in no case exceed the sum of two thousand five hundred dollars: *Provided*, Said commissioners shall hereafter be appointed by the President, by and with the advice and consent of the Senate: *Provided*, That not more than two members of each board shall belong to the same political party; * * * [30 Stat. L. 37.]

This is from the Sundry Civil Appropriation Act of June 4, 1897, ch. 2. This paragraph, except the last two provisos, is repeated in the subsequent Appropriation Act of July 1, 1898, ch. 546, 30 Stat. L. 619.

[SEC. 1.] [*Commissioners — appointment — compensation and duties.*] * * * To complete the examination and classification of certain lands within the land grant and indemnity land grant limits of the Northern Pacific Railroad Company in the Helena and Missoula land

districts in the State of Montana and in the Cœur d'Alene land district in the State of Idaho, with special reference to the mineral or non-mineral character of such lands, as authorized by the Act of February twenty-sixth, eighteen hundred and ninety-five (Twenty-eighth Statutes, six hundred and eighty-three), namely: For the compensation of the commissioners, not exceeding fifteen in number, of whom not more than ten shall be of one political party, to be appointed by the President, by and with the advice and consent of the Senate, such compensation not to exceed six dollars per day for each commissioner while actually engaged in the performance of their duties, which amount shall include their transportation and subsistence expenses; also for the publication of monthly reports and for the payment of such clerical help as in the opinion of the Commissioner of the General Land Office may be necessary for the expeditious and economical prosecution of the work, twenty-five thousand dollars: *Provided*, That each commissioner shall act separately, and only one commissioner shall examine and report on any tract of land, and his examination and report shall have the same force and effect as if made by three commissioners, and under this appropriation the entire work of examination and classification, including the publication of notices and all other expenses therewith connected, shall be completed; and the law of February twenty-sixth, eighteen hundred and ninety-five, entitled "An Act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho," shall be deemed and held to be applicable to the commissioners herein provided for. * * * [31 Stat. L. 615.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

[SEC. 1.] [*Selection of lieu lands by railroad grantee where purchaser from United States or settler refuses to transfer his entry.*] That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed land shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patents shall not issue until after the survey: *Provided, however*, That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered

to the said railroad grantee or its successor in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions. And all right, title, and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: *Provided further*, That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal: *And provided further*, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: *And provided further*, That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States, but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this Act, and nothing in this Act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted: *And provided further*, That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which such railroad grant extends, and make proof therefor as in other cases provided; and in making such proof, credit shall be given for the period of their bona fide residence and amount of their improve-

ments upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them or hold his claim and allow the said railroad company to do so under the terms of this Act. * * * [30 Stat. L. 620-622.]

This is from the Sundry Civil Appropriation Act of July 1, 1898, ch. 546.

The purpose of this Act was to provide a certain, speedy, and equitable way in which all controversies between the railroad grantee or its successors and purchasers or settlers upon odd-numbered sections within the place or indemnity limits of the land grant, who claimed by color of any law of the United States or any ruling of the land department, should be settled and adjusted without contest or litigation either in the land department or in the courts. The railway company, by its express acceptance of the Act, became bound by its provisions, and obligated to carry out its terms. By its terms, each of such purchasers and settlers is to be notified by the secretary of the interior of his option to transfer his entry or claim and take other lands in lieu thereof. If he takes such lieu lands, he relinquishes his former land, and this ends his contest with the railroad grantee. As to those purchasers or settlers who elect to retain their claimed lands, the railroad grantee or its successor, on receiving lists of such lands from the secretary, must relinquish the lands so listed, and may take lieu lands therefor, and the relinquished lands revert to the United States, and stand as if never included in the land grant, and the controversies about them are ended. The Act refers to conditions existing at the time of its passage and became operative at that time. After the passage and acceptance of the Act the railroad could not convey rights in the land not in subordination to its provisions. The Act has application to lands patented before Jan. 1, 1898. The fact that the land department had lost jurisdiction over the lands patented is immaterial. The Act does not provide for any examination or decision by the land department of the merits of any claims. The Acts required to be done by the secretary of the interior are merely ministerial — first, to offer the option to the individual claimant, and, if the land is by him relinquished, to require such instrument as will make the relinquishment effectual. If he refuses to relinquish, then the secretary's duty is to place the land on the list respecting which relinquishment is to be required of, and cannot be refused by the railroad claimant; the lists so furnished being conclusive. *Humbird v. Avery*, (1901) 110 Fed. Rep. 465.

The Act of Oct. 1, 1890, ch. 1258, entitled

"An Act for the relief of settlers on Northern Pacific Railroad indemnity lands," provided as follows:

"[SEC. 1.] That those persons who, after the fifteenth day of August, in the year of our Lord eighteen hundred and eighty-seven, and before the first day of January, in the year eighteen hundred and eighty-nine, settled upon, improved, and made final proof on lands in the so-called second indemnity belt of the Northern Pacific Railroad Company's grant under the homestead and pre-emption laws of the United States, or their heirs, may transfer their said entries from said tracts to such other vacant surveyed Government land in compact form and in legal subdivisions, subject to entry under the homestead and pre-emption laws, as they may select, and receive final certificates and receipts therefor, in lieu of the tracts proved up on in said belt by the respective claimants: *Provided*, That such transfer of entry shall be made and completed within twelve months from the date of the passage of this act, and be so made in person by the claimant, or in case of death by his legal representative, and without the intervention of agent or attorney. [26 Stat. L. 647.]

"SEC. 2. That all persons possessing the requisite qualifications under the pre-emption or homestead laws, who in good faith settled upon and improved land in said second indemnity belt, having made filing or entry of the same, and for any reason, other than voluntary abandonment, failed to make proof thereon, may, in lieu thereof within one year after the passage of this act transfer their claims to any vacant surveyed Government land subject to entry under the homestead or pre-emption laws, and make proof therefor as in other cases provided; and in making such proof credit shall be given for the period of their bona fide residence and amount of their improvements upon their respective claims in the said indemnity belt, the same as if made upon the tract to which the transfer is made: *Provided*, That no final entry shall be permitted, except upon proof of continuous residence upon the land, the subject of such new entry, for a period of not less than three months prior thereto. Payment for said final selection shall be made as under existing laws. The provisions of this Act shall be carried into effect under such rules and regulations as may be prescribed by the Secretary of the Interior." [26 Stat. L. 647.]

An Act For the relief of settlers under the public-land laws to lands within the indemnity limits of the grant to the Northern Pacific Railroad Company.

[*Act of March 2, 1901, ch. 807, 31 Stat. L. 950.*]

[*Extension of preceding section.*] That the provisions of the Act of July first, eighteen hundred and ninety-eight, appearing in thirtieth Statutes at Large, at pages six hundred and twenty, six hundred and twenty-one, and six hundred and twenty-two, providing a plan for the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, are hereby extended and made applicable to all instances where lands in odd-numbered sections within the indemnity limits of the grant to said company were patented to settlers under the public-land laws in pursuance of applications presented to or proceedings initiated in, the local land office at a time when the land was embraced in a pending indemnity selection made by said company in conformity with the regulations of the Land Department, which indemnity selection has not since been waived or abandoned. [31 Stat. L. 950.]

An Act For the relief of settlers on the Northern Pacific Railroad indemnity lands.

[*Act of June 3, 1896, ch. 316, 29 Stat. L. 245.*]

[**SEC. 1.**] [*Settlers on second indemnity grant, Minnesota, allowed other lands for canceled entries.*] That those persons, their heirs, or legal representatives, who, between the fifteenth day of August, anno Domini eighteen hundred and eighty-seven, and the first day of January, anno Domini eighteen hundred and eighty-nine, settled upon and made final proof and entry, under the homestead or preemption laws, of lands within the so-called second indemnity belt of the Northern Pacific Railway Company's grant in the State of Minnesota, which entries were afterwards, without their fault, canceled, upon establishing these facts before the register and receiver of the local land office, in such mode and under such rules as may be prescribed by the Secretary of the Interior, shall be allowed to make final homestead entry, and receive a patent therefor, of a quantity of land of any of the unappropriated public lands of the United States subject to homestead entry, equal in acreage to the land proved up and entered in the said second indemnity belt, as aforesaid, without being required to make any settlement or improvement upon or cultivation of such land so entered prior to such entry; and those persons, their heirs or legal representatives, who, within the period aforesaid for the space of six months settled upon, improved, and cultivated any of said indemnity lands with a view of entering the same under the homestead or preemption laws, being competent to make such entries, and who were not permitted to make such entries, upon establishing these facts before the register and receiver of the local land office, in such mode and under such rules as the Secretary of the Interior may prescribe, shall be allowed to enter under the homestead laws of the United States a quantity of land of the unappropriated public lands of the United States, subject to homestead entry, equal in amount to the land settled upon, improved, and cultivated, as aforesaid, and under the homestead entry so made, shall, when making proof and final entry, receive credit for the settlement, improvement, and cultivation made upon the said indemnity land as aforesaid: *Provided*, That the law in force in eighteen hundred and eighty-nine governing the commutation of homestead entries shall apply to the commutation of entries under this section. [29 Stat. L. 245.]

"In 1887 the interior department held that the withdrawal of the second indemnity belt of the Northern Pacific Railroad in the state of Minnesota was illegal and unauthorized, and held that the lands within such belt were open to homestead and pre-emption settlers. This order and ruling of the department remained in force until the first day of January, 1889, when it was revoked, and the lands were again withdrawn from settlement and entry. During this period, when the lands were thus thrown open for settle-

ment and entry, many settlers moved onto these lands, and many homestead and pre-emption entries were made and allowed at the local land office. After the department revoked its order opening these lands for settlement and entry, all the entries that had been made and allowed were canceled and set aside, and those settlers who had not consummated their settlement by final entry were denied the right so to do. The object of this Act is to relieve these settlers." *Compilers' note, 2 Supp. R. S. 499.*

SEC. 2. [*Entries on Chippewa lands.*] That those who are entitled to make the homestead entries prescribed in the preceding section may make such entries of any of the agricultural lands embraced in the provisions of an Act entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January fourteenth, eighteen hundred and eighty-nine, upon condition of paying for such lands the price prescribed in said Act. [29 Stat. L. 245.]

SEC. 3. [*Rights not assignable.*] That the right of homestead entry conferred by the provisions of this Act shall not be assignable, and no conveyance, sale, or transfer of the land so entered shall be valid or of any effect if made before patent has issued. [29 Stat. L. 246.]

Transfer by entryman.—Plaintiff purchased a tract of land, entered under 29 Stat. L. 246, ch. 316, on which the full amount of the purchase price had been paid by the entryman, but before patent had been issued. The court held that the restriction in such Act

upon transfers of the entryman's rights before the issuance of the patent did not benefit a subsequent purchaser, who procured a deed in fraud of the first grantee. *McAlpine v. Resch*, (1901) 82 Minn. 523.

[XVI. RESERVATIONS AND GRANTS FOR PUBLIC PURPOSES — SCHOOL LANDS.]

Sec. 1946. [*Reservation of school lands in certain Territories.*] Sections numbered sixteen and thirty-six, in each township of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming shall be reserved for the purpose of being applied to schools in the several Territories herein named, and in the States and Territories hereafter to be erected out of the same. [R. S.]

N. Mex., Act of Sept. 9, 1850, ch. 49, 9 Stat. L. 452; Utah, Act of Sept. 9, 1850, ch. 51, 9 Stat. L. 457; Colo., Act of Feb. 28, 1861, ch. 59, 12 Stat. L. 176; Dak., Act of March 2, 1861, ch. 86, 12 Stat. L. 243; Ariz., Act of Feb. 24, 1863, ch. 56, 12 Stat. L. 665; Idaho, Act of March 3, 1863, ch. 117, 12 Stat. L. 814; Mont., Act of May 26, 1864, ch. 90, 13 Stat. L. 91; Wyo., Act of July 25, 1868, ch. 235, 15 Stat. L. 183.

See later provisions in this division.

School reservations as public lands.— "Because of the mere reservation or appropriation by the United States of these sections for the purpose of being applied to the common schools of the future, do they lose their character of public lands? It is true that they are not 'public lands,' in that they are

open to entry, etc., but that fact alone does not prevent them being in a certain sense public lands. The government has, for a wise purpose, set apart and reserved these lands from the general domain, and announced the purpose to which they will be devoted. It retains control and dominion over these until the happening of a certain event. It is somewhat as a trustee of an express trust. It also retains the right, up to a certain time, to annul the Act by which such sections were severed, and might, within that limit, annul the former Act, and throw these lands open, as 'public lands.' This reserved right in the government must give it control over these lands as absolute as that of any owner could be. As is well said, ever since the organization of the territory,

these school sections have been recognized as 'public lands,' and the courts have sustained all the rights of the government, whenever their aid has been invoked, in preventing trespass upon them. Any other doctrine would lead to a practical annulment of the Act of Congress, and render nugatory the effort to provide for and establish a common-school system." *Barkley v. U. S.*, (1888) 3 Wash. Ter. 522.

Prior to statehood. — Where a suit, brought to enjoin a person from maintaining an inclosure upon land reserved to the territory of Utah for the purpose of being applied to schools when Utah should become a state, was resisted on the ground that the lands occupied were not "public lands" within the meaning of the statute authorizing suits to prevent unlawful occupancy of "public lands," it was held that the words "public lands" as used in the statute in question, included lands which, although reserved for the purpose of being applied to schools, had not yet been so applied. *U. S. v. Elliot*, (1895) 12 Utah 119.

Statehood conferred pending proceedings. — Where, however, after the above decision had been made and the cause remanded for further proceedings, the territory became a state by the Act granting the land in controversy to the state for school purposes, it was held that the lands were no longer public lands within the Act under which the suit was brought and that the bill must accordingly be dismissed. *U. S. v. Elliott*, (1896) 74 Fed. Rep. 92.

Title in United States until survey. — The legal right and title to sections 16 and 36 remain in the United States until they are surveyed; for until surveyed the sections and townships have no existence as such. *Ferry v. Street*, (1886) 4 Utah 521, *dismissed* (1886) 119 U. S. 385. To the same effect are:

United States. — *Gaines v. Nicholson*, (1850) 9 How. (U. S.) 364; *Campbell v. Doe*, (1851) 13 How. (U. S.) 244; *Kissell v. St. Louis Public Schools*, (1855) 18 How. (U. S.) 19, *affirming* (1852) 16 Mo. 553; *Cooper v. Roberts*, (1855) 18 How. (U. S.) 173, *reversing* (1854) 6 McLean (U. S.) 93; *Beecher v. Wetherby*, (1877) 95 U. S. 517; *Fraser v. O'Connor*, (1885) 115 U. S. 102; *McCreery v. Haskell*, (1886) 119 U. S. 327; *Williams v. U. S.*, (1891) 138 U. S. 516; *McNee v. Donahue*, (1892) 142 U. S. 587, *affirming* (1888) 76 Cal. 499; *Hibberd v. Slack*, (1897) 84 Fed. Rep. 571. See also

Heydenfeldt v. Daney Gold, etc., Min. Co., (1876) 93 U. S. 634, *affirming* (1875) 10 Nev. 290.

Alabama. — *Sprayberry v. State*, (1878) 62 Ala. 461. See also *Knabe v. Burden*, (1889) 88 Ala. 436.

California. — *Terry v. Megerle*, (1864) 24 Cal. 609, 85 Am. Dec. 84; *Higgins v. Houghton*, (1864) 25 Cal. 252; *Grogan v. Knight*, (1865) 27 Cal. 516; *Middleton v. Low*, (1866) 30 Cal. 596; *Hastings v. Devlin*, (1870) 40 Cal. 358; *Collins v. Bartlett*, (1872) 44 Cal. 371; *Buhne v. Chism*, (1874) 48 Cal. 467; *Rooker v. Johnston*, (1874) 49 Cal. 3; *Finney v. Berger*, (1875) 50 Cal. 248; *Medley v. Robertson*, (1880) 55 Cal. 396; *Wedekind v. Craig*, (1880) 56 Cal. 645; *Bullock v. Rouse*, (1889) 81 Cal. 590; *Gilson v. Robinson*, (Cal. 1885) 7 Pac. Rep. 428.

Kansas. — *State v. Stringfellow*, (1864) 2 Kan. 263.

Louisiana. — *McCastle v. Chaney*, (1876) 28 La. Ann. 720.

Missouri. — *Kissell v. St. Louis Public Schools*, (1852) 16 Mo. 553, *affirmed* (1855) 18 How. (U. S.) 19; *State v. Ham*, (1854) 19 Mo. 592, *affirmed* (1855) 18 How. (U. S.) 126; *Papin v. Ryan*, (1862) 32 Mo. 21; *Patterson v. Fagan*, (1866) 38 Mo. 70. *Compare* *Bowlin v. Furman*, (1859) 28 Mo. 427; *Cummings v. Powell*, (1888) 97 Mo. 524.

Nevada. — *State v. Blasdel*, (1868) 4 Nev. 241; *Layton v. Farrell*, (1876) 11 Nev. 451.

Authority of territorial legislature to make leases. — The reservation provided for in this section is not equivalent to a grant to the territory, and the territorial legislature has no right to pass a law giving authority to the County Court to lease sections 16 and 36, reserved by the United States for common school purposes. *Burrows v. Kimball*, (1894) 11 Utah 149. See also *Vincennes University v. Indiana*, (1852) 14 How. (U. S.) 274.

Mere settlement upon and cultivation of a portion of sections 16 and 36 before the same is surveyed does not exclude such portion from the school grant in the absence of an express provision in the statute to that effect. Whatever may be the possessory rights of a person who so occupies and cultivates such lands as against other claimants, such rights could not avail against the power of Congress to make other disposition of the lands. *Gonzales v. French*, (1896) 164 U. S. 338; *Hartman v. Warren*, (C. C. A. 1896) 76 Fed. Rep. 157.

Sec. 1947. [*Certain sections in Washington Territory to be reserved.*] Sections numbered sixteen and thirty-six in each township of Washington Territory shall be reserved for the purpose of being applied to common schools in that Territory. In all cases where sections sixteen and thirty-six, or either or any of them, are occupied by actual settlers prior to survey thereof, the county commissioners of the counties in which such sections so occupied are situated are authorized to locate other lands, to an equal amount in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied. [R. S.]

Act of March 2, 1853, ch. 90, 10 Stat. L. 179.

See later provisions in this division.

Authority of those selecting "other lands" not a federal question.—From the legislation of Congress it is clear that the policy of the government has been a generous one in respect to grants for school purposes, and such acts are to be construed so as to carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance; and in order to ascertain that intent, the condition of the country at the time the acts were passed, as well as the purpose declared, or the force of the Act, must be considered. Tested by this rule it is obvious that Congress intended that Washington should receive full sections 16 and 36, or, in case of a failure by reason of prior settlement, or natural causes, the equivalent of such sections, and designated the secre-

tary of the interior as the officer to approve any selections made by the territory. Where a person assumes to act for the territory in selecting lands, and his selection is approved by the secretary of the interior, it is sufficient. At any rate the question as to the authority of the person who makes the selection is not a federal question, but one whose decision by the courts of Washington is final. *Johanson v. Washington*, (1903) 190 U. S. 179, *affirming* (1901) 26 Wash. 668.

Entry after survey void.—Under this section and the enabling Act making a present grant of sections 16 and 36 to the state, to take effect as soon as the state should be organized, an entry made upon such sections, subsequent to their survey and the approval of the enabling Act, is void, whether the entry was made under the timber and stone Act or the mining laws. *Wheeler v. Smith*, (1893) 5 Wash. 704.

Sec. 2275. [*Settlements before survey on sections 16 or 36, deficiencies thereof.*] Where settlements with a view to pre-emption or homestead have been, or shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by pre-emption of homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided*, Where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of sections sixteen and thirty-six therein; but such selections may not be made within the boundaries of said reservations: *Provided, however*, That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein; but nothing in this proviso shall be construed as conferring any right not now existing. [R. S.]

This section was amended to read as above by Act of Feb. 28, 1891, ch. 384, 26 Stat. L. 796.

The section originally read as follows:

"SEC. 2275. Where settlements, with a view to pre-emption, have been made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the pre-emption claim of such settler; and if they, or either of them, have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by pre-emptors; and other lands are also appropriated to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever." Act of Feb. 26, 1859, ch. 58, 11 Stat. L. 385.

Application to Utah.—See Act of May 3, 1902, ch. 683, *infra*, div. XVI.

This Act is based upon the idea that as soon as a valid legal survey has been made in the field of lands of the United States, they are to all intents and purposes surveyed lands and are to be treated as such. *Oakley v. Stuart*, (1878) 52 Cal. 521.

Statute of general application.—This statute is general in its terms and was intended to be applicable alike to all states and territories receiving grants of school lands. Consequently it follows that the state of California is entitled to make a selection for land lost to the state, provided it is sufficiently established that the land lost is of a mineral character. *Johnston v. Morris*, (C. C. A. 1896) 72 Fed. Rep. 890.

When title vests.—This section clearly shows that it was the intention of Congress that title should not vest in the territory or state before the survey. "When a person settles on the public lands with a view to pre-emption, this section gives him a right to the patent, notwithstanding the land turns out, when surveyed, to be section 16 or 36, or a part thereof. The title and the right to dispose thereof is regarded as in the United States till the survey. If not, why transfer it by patent to the pre-emptor? Those sections, or their equivalent in other lands, are regarded as pledged for school purposes. The language of the law is 'reserved or pledged.' The term 'reserved' is regarded as synonymous in meaning with 'pledged.'" *Ferry v. Street*, (1886) 4 Utah 531, *dismissed* 119 U. S. 385.

The title to lands selected under this statute does not vest in a state by a mere selection of the land. Any selection by a state is ineffectual to transfer title from the United States to the state, at least until such selection is approved by the secretary of the interior, if not until the certification of such land to the state. *Baker v. Jamison*, (1893) 54 Minn. 17.

When lands withdrawn from private entry.—When a selection of substituted lands has been made, and that selection approved by

the secretary of the interior, the land is no longer subject to private entry. And while the land remains subject to such selection and approval no individual can come in and question its validity. *Johanson v. Washington*, (1903) 190 U. S. 179, *affirming* (1901) 26 Wash. 668.

Settlement is made the initiatory step by the laws of Congress to secure to a party the right of pre-emption. *U. S. v. Union Pac. R. Co.*, (1894) 61 Fed. Rep. 143, *affirmed* (C. C. A. 1895) 67 Fed. Rep. 974.

Right of settlement not assignable.—The purpose of this section "is evidently to fix the status of such settlers as may prior to survey, without notice of the fact, have fixed their residence, with a view to pre-emption, on said sections, and to give such settlers the privilege of entering such lands under the pre-emption law, and obtaining title thereto; and for all such lands as may be patented to such pre-emptors, other lands, equal in quantity, are reserved to the territory or state for school purposes in lieu thereof. We think this privilege is limited by the language of section 2275, as well as by other provisions of the pre-emption laws, to such settlers as may be found on school lands at the time of the survey of the lands in the field. The right of pre-emption of such settlers as may have settled on school lands prior to survey being a personal privilege, it follows that sections 16 and 36 of each township are reserved to the territory or state for school purposes, subject only to the personal rights of such settlers to obtain title to the same under the pre-emption law; and, if they do not choose to assert their rights by filing and entering the land, or subsequently abandon their settlements, the land continues to be reserved to the state or territory for school purposes." A sale by the settlers of their right of possession and improvements does not pass any of their rights to the purchaser. *Gonzales v. French*, (1893) 4 Ariz. 77.

Necessity for entry in land office.—A claim of pre-emption is fatally defective where the grantees of the claimant failed to make or file an actual entry in the proper land office. *Gonzales v. French*, (1896) 164 U. S. 338.

Responsibility of officer receiving proof of entry.—Where an entryman who goes to the public land office for the purpose of obtaining public land is required by the receiver to pay the purchase price of the land before allowing his proofs of entry to be filed, the receiver accepts the money as a public officer of the United States, and not as the agent of the entryman; and the payment is to be regarded as one of public money made to the government within the meaning of the law and of the bond given by the receiver for the faithful discharge of the duties of his office. *Smith v. U. S.*, (1898) 170 U. S. 372.

School lands included in forest reservation.—This Act, as amended by the Act of Feb. 28, 1891, does not authorize any exchange of lands between the federal and state governments, but only the indemnification of the state for the loss of lands to which it

was entitled. The Act does not give to the state the right to select other lands of equal acreage with the school sections where the latter are included within the exterior boundaries of a forest reservation subsequent to their survey in the field, and the title thereto has thus become vested in the state. *Hibberd v. Slack*, (1897) 84 Fed. Rep. 571.

No indemnity for swamp land.—It seems that this statute does not authorize selections by the state in lieu of swamp lands lost from a school land grant, for that would be giving to the state an indemnity for a class of lands already donated to the state, and the principle upon which indemnity is given is for a deficiency and not for that which the state has already received. *Johnston v. Morris*, (C. C. A. 1896) 72 Fed. Rep. 890.

Exchange of state and federal lands not authorized.—This section does not authorize any exchange of lands between the federal and state governments, but only an indemnification of the state for the loss of lands to which it was entitled. Thus a state has no right to select other lands of equal acreage with the school sections where such sections, after the state had acquired title thereto by

survey in the field, are included within the bounds of a forest reservation. *Hibberd v. Slack*, (1897) 84 Fed. Rep. 571.

Right to selected lands as against Central Pacific railroad grant.—Certain lands within the ten-mile limits of the Central Pacific railroad, being part of odd-numbered sections granted thereto by the Act of July 1, 1862, chapter 120, were, under section 7 of that Act, ordered to be withdrawn, and this order was received at the office at San Francisco on the 30th of January, 1865. The map showing definite location of line of said road was filed in the general land office Feb. 13, 1873, and on May 12, 1874, said lands were selected by the railroad company as inuring to it under said grant. But the same lands were selected by the state of California June 13, 1865, as indemnity for deficiency of school lands granted by Acts of March 3, 1853, and Feb. 26, 1859, and a list thereof was certified and approved to the state Sept. 8, 1870. The railroad company applied for patents for these lands. The secretary of the interior was advised that he was not authorized by the general laws or the provisions of the Act of July 1, 1862, to issue such patents to the company. (1882) 17 Op. Atty-Gen. 406.

Sec. 2276. [*Selections to supply deficiencies of school lands.*] That the lands appropriated by the preceding section shall be selected from any unappropriated, surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur; and where the selections are to compensate for deficiencies of school lands in fractional townships, such selections shall be made in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one-half, and not more than three-quarters of a township, three-quarters of a section; for a fractional township, containing a greater quantity of land than one quarter, and not more than one half of a township, one-half section; and for a fractional township containing a greater quantity of land than one entire section, and not more than one-quarter of a township one-quarter section of land: *Provided*, That the States or Territories which are, or shall be entitled to both the sixteenth and thirty-sixth sections in place, shall have the right to select double the amounts named, to compensate for deficiencies of school land in fractional townships. [*R. S.*]

This section was amended to read as above by the Act of Feb. 28, 1891, ch. 384, 26 Stat. L. 797.

The section originally read as follows:

"SEC. 2276. The lands appropriated by the preceding section shall be selected, within the same land-district, in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one-half, and not more than three-quarters, of a township, three-quarters of a section: for a fractional township, containing a greater quantity of land than one-quarter, and not more than one-half, of a township, one-half sec-

tion; and for a fractional township, containing a greater quantity of land than one entire section, and not more than one-quarter of a township, one-quarter section of land." Act of Feb. 26, 1859, ch. 58, 11 Stat. L. 385; Act of May 20, 1826, ch. 83, 4 Stat. L. 179.

Application to Utah.—See Act of May 3, 1902, ch. 683, *infra*, div. XVI.

School lands included in forest reservation.—This Act, as amended by the Act of Feb. 29, 1891, does not authorize any exchange of lands between the federal and state governments, but only the indemnification of the state for the loss of lands to which it was entitled. The Act does not give to the state the right to select other lands of equal acreage with the school sections, where the latter, subsequent to their survey in the field, and

the vesting of the title thereto in the state, are included within the exterior boundaries of a forest reservation. *Hibberd v. Slack*, (1897) 84 Feb. Rep. 571.

When title to selected lands vests.—The title to lands selected under this statute does not vest in a state by a mere selection of the land. Any selection by a state is ineffectual to transfer title from the United States to the state, at least until such selection is approved by the secretary of the interior, if not until the certification of such land to the state. *Baker v. Jamison*, (1893) 54 Minn. 17.

Priorities as between selections by register and entryman.—Under the Act of May 20, 1826, the secretary of the treasury,

through the land office, directed the register to make selections and return lists thereof to be submitted to him for his approbation. Under this direction certain lands were selected and reserved from sale. Afterwards the register withdrew the selection by authority of the commissioner of the land office, and permitted a person, knowing the circumstances under which the land had been reserved from sale, to enter and take it up. Finally, the secretary of the treasury selected the land in question under authority given to him by the Act of 1826. It was held that the selection was good and conferred a title superior to the immediate entry. *Campbell v. Doe*, (1851) 13 How. (U. S.) 244, *affirming* (1848) 17 Ohio 267.

Sec. 2377. [*Limitation of entries by agricultural college scrip.*] In no case shall more than three sections of public lands be entered at private entry in any one township by scrip issued to any State under the act approved July two, eighteen hundred and sixty-two, for the establishment of an agricultural college therein. [R. S.]

Act of July 27, 1868, ch. 256, 15 Stat. L. 227.

Sec. 2378. [*Grant to new states.*] There is granted, for purposes of internal improvement, to each new State hereafter admitted into the Union, upon such admission, so much public land as, including the quantity that was granted to such State before its admission and while under a territorial government, will make five hundred thousand acres. [R. S.]

Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 455. See later provisions in this division.

No preferred right by settlement or improvement.—One of the characteristics of a grant under this Act is that no preferred right to make an entry therein can be acquired by settlement or improvement of the land to be entered. *Hartman v. Warren*, (C. C. A. 1896) 76 Fed. Rep. 157.

Necessity for selection.—No rights accrue to the state under this Act until a selection has been made. *U. S. v. Des Moines Nav., etc., Co.*, (1892) 142 U. S. 510.

Title passed by certification.—“Such selections were subject to the approval of the land department of the United States, but when so made and approved the lands were to be certified to the state, and such certification was to have all the effect of a patent.” *Deweese v. Reinhard*, (1897) 165 U. S. 386, *affirming* (C. C. A. 1894) 61 Fed. Rep. 777.

Character of public building authorized.—The phrase “internal improvement,” as used in this section and in section 12 of the Enabling Act of Colorado, does not include public buildings, such as asylums, state houses, universities, and colleges, or any other public institution of like character, so that the proceeds derived from the sources mentioned in these Acts may be applied to their construction. *In re Internal Imp. Fund*, (1897) 24 Colo. 247. See also *In re Internal Improvements*, (1893) 18 Colo. 317.

Whether grant in present or in future.—The Act of Congress of Sept. 4, 1841, declar-

ing that “there shall be granted to each state” 500,000 acres of land, only imports that a grant shall be made in the future, and did not convey the fee to any lands whatever, but left the land system of the United States in full operation as to regulations of title, so as to prevent conflicting entries. “It could not have been the intention of the government to relinquish the exercise of power over the public lands that might be located by the state. The same system was to be observed in the entry of the lands by the state as by individuals, except the payment of the money.” *Foley v. Harrison*, (1853) 15 How. (U. S.) 433. See also *McNee v. Donahue*, (1892) 142 U. S. 587.

Rights of selection and vesting of title in California.—In *Terry v. Megerle*, (1864) 24 Cal. 610, it was held that the state of California has no right to select or locate the 500,000 acres of land granted to her for purposes of internal improvement until after the lands selected have been surveyed and sectionized by the proper officers of the government; and that no title to any specific portion of the grant can vest in the state unless the land has been surveyed and unless the selection is made of lands to which there is no subsisting valid claim by pre-emption or otherwise, and is made in parcels conformably to sectional divisions and subdivisions of not less than three hundred and twenty acres, and has been approved by the federal government.

Wisconsin.—The land granted to the territory of Wisconsin by the Act of 1838 (5

Stat. L. 245), to aid in opening a canal to unite the waters of Lake Michigan to those of Rock river, is not to be included and computed as part of the 500,000 acres granted

by the Act of 1841, for the purposes of internal improvement. (1852) 5 Op. Atty.-Gen. 574.

Sec. 2379. [*Selections and locations of lands granted in last section.*] The selections of lands, granted in the preceding section, shall be made within the limits of each State so admitted into the Union, in such manner as the legislatures thereof, respectively, may direct; and such lands shall be located in parcels conformably to sectional divisions and subdivisions of not less than three hundred and twenty acres in any one location, on any public land not reserved from sale by law of Congress or by proclamation of the President. The locations may be made at any time after the public lands in any such new State have been surveyed according to law. [R. S.]

Act of Sept. 4, 1841, ch. 16, 5 Stat. L. 455.

Right as between state and settler.—As between a state seeking to select lands as a part of the grant to it by this Act and a settler seeking to acquire a right of pre-emption to the same land, the party first commencing the proceedings necessary to obtain title and following up the proceedings to the patent acquires the better right to the premises. "The patent, which is afterwards issued, relates back to the date of the initiatory Act, and cuts off all intervening claimants. Thus the patent upon a state selection takes effect as of the time when the selection is made and reported to the land office; and the patent upon a pre-emption settlement takes effect from the time of the settlement as disclosed in the declaratory statement or proofs of the settler to the register of the local land office. The action of the state and of the settler must, of course, in some way, be brought officially to the notice of the officers of the government having in their custody the records and other evidences of title to the property of the United States, before their respective claims to priority of right can be recognized. But it was not intended by the eighth section of the Act of 1841, in authorizing the state to make selections of land, to interfere with the operation of the other provisions of that Act, regulating the system of settlement and pre-emption. The two modes of acquiring title to land from the United States were not in conflict with each other. Both were to have full operation, that one controlling in a particular case under which the first initiatory step was had." *McCreery v. Haskell*, (1886) 119 U. S. 327. See also *Shepley v. Cowan*, (1875) 91 U. S. 330.

Previous pre-emption rights.—The states to which lands were given by the above statute are not entitled to take any land to which pre-emption rights existed. (1842) 4 Op. Atty.-Gen. 71.

Rights of pre-emptioners.—If the state selects as a part of the grant, lands in the possession of a *bona fide* pre-emptioner at the time of the selection, the pre-emptioner is in such privity with the common source of title that he can attack a patent granted

by the state for such lands, in an action of ejectment brought by the patentee or his assignee. *Terry v. Megerle*, (1864) 24 Cal. 610.

No patent issuable pending contest between claimants.—Pending a contest between a grantee from the state, of lands acquired by the state by the Act of 1841, and a claimant under the Sioux Half Breed Location, under the Act of July 23, 1866, no patent can properly issue. *U. S. v. Chapman*, (1879) 5 Sawy. (U. S.) 528, 25 Fed. Cas. No. 14,785.

Right of homestead claimant to sue.—One who claims land by virtue of a homestead entry as against a grantee of a state, of lands selected by the state under this Act and duly certified to the state by the secretary of the interior, does not stand in such privity with the United States as entitles him to maintain a suit to annul the certification of the land in dispute. *Deweese v. Reinhard*, (C. C. A. 1894) 61 Fed. Rep. 777, *affirmed* (1897) 165 U. S. 386; *Fraser v. O'Connor*, (1885) 115 U. S. 102.

Lands previously reserved.—It was not the intention of Congress by section 8 of the Act of 1841 to give a state the power to take lands which had actually been reserved by the United States for any other purpose. *Wolsey v. Chapman*, (1879) 101 U. S. 755. See also (1856) 8 Op. Atty.-Gen. 16.

Jurisdiction of United States Supreme Court of claims of individuals.—Where a state issues patents to individuals, of lands granted to the state by this Act, such individuals do not derive their title to the land from any statute of the United States, and therefore the Supreme Court has no jurisdiction over contested claims in regard to such lands by virtue of the 25th section of the Judiciary Act. *Shaffer v. Scudday*, (1856) 19 How. (U. S.) 18; *Wynn v. Morris*, (1857) 20 How. (U. S.) 3.

No preferred right by settlement or improvement.—One of the characteristics of a grant under this Act is that no preferred right to make an entry therein can be acquired by settlement or improvement of the land to be entered. *Hartman v. Warren*, (C. C. A. 1896) 76 Fed. Rep. 157.

Sec. 2286. [*Pre-emptions by counties for seats of justice.*] There shall be granted to the several counties or parishes of each State and Territory, where

there are public lands, at the minimum price for which public lands of the United States are sold, the right of pre-emption to one quarter-section of land, in each of the counties or parishes, in trust for such counties or parishes, respectively, for the establishment of seats of justice therein; but the proceeds of the sale of each of such quarter-section[s] shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same. And the seat of justice for such counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located. [R. S.]

Act of May 26, 1824, ch. 169, 4 Stat. L. 50.
See later provisions in this division.

An Act Authorizing the Attorney-General, upon the request of the Secretary of the Interior, to appear in suits brought by States relative to school lands.

[Act of March 2, 1901, ch. 808, 31 Stat. L. 950.]

[*Suit to determine right to school lands — parties.*] That in any suit heretofore or hereafter instituted in the Supreme Court of the United States to determine the right of a State to what are commonly known as school lands within any Indian reservation or any Indian cession where an Indian tribe claims any right to or interest in the lands in controversy, or in the disposition thereof by the United States, the right of such State may be fully tested and determined without making the Indian tribe, or any portion thereof, a party to the suit if the Secretary of the Interior is made a party thereto; and the duty of representing and defending the right or interest of the Indian tribe, or any portion thereof, in the matter shall devolve upon the Attorney-General upon the request of such Secretary. [31 Stat. L. 950.]

Jurisdiction of Supreme Court—United States real party in interest adverse to state.—Congress “has by this legislation in effect declared that the Indians, although the real parties in interest, need not be made parties to the suit; that the United States will, for the purposes of the litigation, stand as the real party in interest, and so far as it could within constitutional limits has expressed the consent of the government to the maintenance of this suit in this court. By the Act it, in effect, declares that it waives all objections on the ground that it is a mere trustee; that it assumes the full responsibilities of ownership, and that it will, whatever may be the outcome of any legislation, stand responsible to the Indians for the full value of the lands in controversy. Can the court say that the United States may not assume such responsibility; may not waive all objections on account of the mere matter of trusteeship, and stand in court as the responsible owner, against whom all litigation may be directed? If it stands as such owner, then within the proposition heretofore referred to a suit which is against its agents, not affecting them individually, but affecting only its title to the real estate, is in substance and effect a suit against the United States. The controversy is made by the Act of 1901 one to which the United States is a party in interest, to be directly

affected by the result, and, therefore, the case is within the first paragraph, as one to which the judicial power of the United States extends. Our conclusion, therefore, is that the original jurisdiction vested by the Constitution in this court over controversies in which a state is a party is not affected by the question whether the state is party plaintiff or party defendant; that a dispute as to the title to real estate is a question of a justiciable nature, and can properly be determined in a judicial proceeding, and that the United States is to be taken, for the purposes of this case, as the real party in interest adverse to the state. We are of opinion, therefore, that this court has jurisdiction of this controversy, and is called upon to determine the case upon its merits.” *Minnesota v. Hitchcock*, (1902) 185 U. S. 373.

Land ceded to Indians do not pass under school grant.—The general scope of the legislation of Congress in regard to public schools and also in regard to Indians as the wards of the government, as well as the technical rules of statutory construction, sustain the contention that none of the lands ceded to Indians passed to the state under the school grants. This is true, although no patent had been executed by the United States to the Indians in severalty or to the tribe at large. Clearly it is enough that

from what had been done there resulted a certain definite tract appropriated to that purpose, and that the Indian occupation was confined by the treaty to that tract, which

came in effect an Indian reservation. *Minnesota v. Hitchcock*, (1902) 185 U. S. 373. See also *Spalding v. Chandler*, (1896) 160 U. S. 394.

[SEC. 1.] [*Selection of school lands on Indian reservations opened to settlement.*] * * * That any State or Territory entitled to indemnity school lands or entitled to select lands for educational purposes under existing law may select such lands within the boundaries of any Indian reservation in such State or Territory from the surplus lands thereof, purchased by the United States after allotments have been made to the Indians of such reservation, and prior to the opening of such reservation to settlement. * * * [28 Stat. L. 899.]

This is from the Indian Appropriation Act of March 2, 1895, ch. 188.

Jurisdiction of suits on claims.—To give the court jurisdiction under this Act of a suit for damages growing out of the claimant's settlement on the Crow Creek and Winnebago reservations, the claim must have

been wholly disallowed by the department of the interior; the suit must have been commenced within six months after the passage of the Act and it must be the same case in law that was before the department. *Schewson v. U. S.*, (1896) 31 Ct. Cl. 192.

An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes.

[Act of Feb. 18, 1881, ch. 61, 21 Stat. L. 326.]

[*Grants to Dakota, Montana, Arizona, Idaho, and Wyoming for universities — sale of lands — investment and use of proceeds.*] That there be, and are hereby, granted to the Territories of Dakota, Montana, Arizona, Idaho, and Wyoming respectively, seventy-two entire sections of the unappropriated public lands within each of said Territories, to be immediately selected and withdrawn from sale and located under the direction of the Secretary of the Interior, and with the approval of the President of the United States, for the use and support of a university in each of said Territories when they shall be admitted as States into the Union: *Provided*, That none of said lands shall be sold except at public auction, and after appraisement by a board of commissioners, to be appointed by the Secretary of the Interior: *Provided further*, That none of said lands shall be sold at less than the appraised value, and in no case at less than two dollars and fifty cents per acre: *Provided*, That the funds derived from the sale of said lands shall be invested in the bonds of the United States and deposited with the Treasurer of the United States; that no more than one-tenth of said lands shall be offered for sale in any one year; that the money derived from the sale of said lands, invested and deposited as hereinbefore set forth, shall constitute a university fund; that no part of said fund shall be expended for university buildings, or the salary of professors or teachers, until the same shall amount to fifty thousand dollars, and then only shall the interest on said fund be used for either of the foregoing purposes until the said fund shall amount to one hundred thousand dollars, when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities. [21 Stat. L. 326.]

Price.—See amendment. Act of Feb. 22, 1889, ch. 180, sec. 14, *infra*, p. 474.

Lands selected for the territory of Dakota

under this Act, and which lie within the state of South Dakota, should be certified to that state. (1890) 19 Op. Atty-Gen. 635.

An act to amend an act passed February fifteenth, eighteen hundred and forty-three, chapter thirty-three, to authorize the legislatures of certain States to sell certain lands appropriated for school purposes.

[Act of June 12, 1884, ch. 79, 23 Stat. L. 41.]

[*Protection or lease of school lands in Illinois, Arkansas, Louisiana, and Tennessee.*] That the second section of the Act of Congress passed February fifteenth, eighteen hundred and forty-three, chapter thirty-three, be amended so as to read as follows, to wit:

“That the legislatures of the States of Illinois, Arkansas, Louisiana, and Tennessee be, and they are hereby, authorized to make such laws and needful regulations as may be deemed expedient to secure and protect from injury or waste the sections reserved by the laws of Congress for the use of schools to each township, and to provide by law, if not deemed expedient to sell, for leasing the same for any term of years they may think proper, in such manner as to render them productive and most conducive to the object for which they are designed.” [23 Stat. L. 41.]

An Act To authorize the leasing of lands for educational purposes in Arizona.

[Act of April 7, 1896, ch. 95, 29 Stat. L. 90.]

[*Lease of lands in Arizona reserved for schools and university — timber cutting prohibited.*] That the lands reserved for university purposes, and all of the school land in the Territory of Arizona reserved by law for school purposes, may be leased under such laws and regulations as may be hereafter prescribed by the legislature of said Territory, but until such legislative action the governor, secretary of the Territory, and superintendent of public instruction shall constitute a board for the leasing of said lands under the rules and regulations heretofore prescribed by the Secretary of the Interior for the respective purposes for which the said reservations were made, except that it shall not be necessary to submit said leases to the Secretary of the Interior for his approval; and all necessary expenses and costs incurred in the leasing, management, and protection of said lands and leases may be paid out of the proceeds derived from such leases.

And it shall be unlawful to cut, remove, or appropriate in any way any timber growing upon the lands leased under the provisions of this Act, and not more than one section of land shall be leased to any one person, corporation, or association of persons, and no lease shall be made for a longer period than five years, and all leases shall terminate on the admission of said Territory as a State, and all money received on account of such leases in excess of actual expenses necessarily incurred in connection with the execution thereof shall be placed to the credit of the public school fund of said Territory, and shall not be used for any other than public school purposes: *Provided*, That the proceeds of leases of university and normal school lands shall be placed to the credit of separate funds for the use of said institutions. [29 Stat. L. 90.]

An act relating to indemnity school selections in the State of California.

[Act of March 1, 1877, ch. 81, 19 Stat. L. 267.]

[SEC. 1.] [*Indemnity school lands confirmed to California.*] That the title to the lands certified to the State of California, known as indemnity school selections, which lands were selected in lieu of sixteenth and thirty-sixth sec-

tions, lying within Mexican grants, of which grants the final survey had not been made at the date of such selection by said State, is hereby confirmed to said State in lieu of the sixteenth and thirty-sixth sections, for which the selections were made. [19 Stat. L. 267.]

Lands not opened to pre-emption settlement.—Lands listed to California as indemnity school lands and patented by the state are not open to pre-emption settlement while in possession of the patentee. *Durand v. Martin*, (1887) 120 U. S. 366.

Lands claimed by state for deficiency no longer public lands.—The fact of the existence of a claim by a state to lands to make good deficiencies in a school grant, is sufficient to take the lands claimed from the category of "public lands" to which alone a railroad grant attached. *U. S. v. Southern Pac. R. Co.*, (1896) 76 Fed. Rep. 134.

Conclusiveness of listing.—The listing and certification of lands to the state of California can be canceled and set aside by the United States Circuit Courts for inadvertence or mistake. *U. S. v. Hendy*, (1893) 54 Fed. Rep. 447.

Prior titles not affected.—This Act cannot affect the rights of a railroad company, which, seven years before this confirmatory Act was passed, acquired a perfect title. The United States then had no interest in the land upon which this Act could operate. *U. S. v. Curtner*, (1889) 38 Fed. Rep. 1.

SEC. 2. [Failure of selections of indemnity lands — protection of innocent purchasers.] That where indemnity school selections have been made and certified to said State, and said selection shall fail by reason of the land in lieu of which they were taken not being included within such final survey of a Mexican grant, or are otherwise defective or invalid, the same are hereby confirmed, and the sixteenth or thirty-sixth section in lieu of which the selection was made shall, upon being excluded from such final survey, be disposed of as other public lands of the United States; *Provided*, That if there be no such sixteenth or thirty-sixth section, and the land certified therefor shall be held by an innocent purchaser for a valuable consideration, such purchaser shall be allowed to prove such facts before the proper land-office, and shall be allowed to purchase the same at one dollar and twenty-five cents per acre, not to exceed three hundred and twenty acres for any one person: *Provided*, That if such person shall neglect or refuse, after knowledge of such facts, to furnish such proof and make payment for such land, it shall be subject to the general land-laws of the United States. [19 Stat. L. 268.]

Statute a complete ratification of school selections.—"This statute was, in our opinion, a full and complete ratification by Congress, according to its terms, of the lists of indemnity school selections which had been before that time certified to the state of California by the United States as indemnity school selections, no matter how defective or insufficient such certificates might originally have been, if the lands included in the lists were not of the character of any of those mentioned in section 4, and if they had not been taken up in good faith by a homestead or pre-emption settler prior to the date of the certificate. The history of the times, which is exemplified by the facts of this case, shows that such must have been the intention of Congress. Almost from the beginning many of the titles under these indemnity selections had been in doubt because of the delay which attended the settlement of Mexican claims, and the records of this court contain a large number of cases in which claimants under the pre-emption and homestead laws of the United States have sought to establish their titles, as against purchasers from the state under indemnity selections who had been many years in possession, because of some real or supposed

defect in the title of the state." *Durand v. Martin*, (1887) 120 U. S. 366, *affirming* (1883) 63 Cal. 39. To the same effect are *Green v. Hayes*, (1886) 70 Cal. 276; *Hambleton v. Duhain*, (1886) 71 Cal. 141; *Daniels v. Gualala Mill Co.*, (1888) 77 Cal. 300; *People v. Noyo Lumber Co.*, (1893) 99 Cal. 456.

The words "or are otherwise defective or invalid," as used in this section, refer to indemnity selections which are invalid or defective for some other reason than that the lands in lieu of which they were made are not included within the final survey of a Mexican grant. Thus, where a selection made by the state was of land then in reserve, and the selection for that reason defective or invalid, the words quoted above apply to this case, and such selection is confirmed by said Act to the state. (1878) 16 Op. Atty-Gen. 69.

Subsequent patents by state valid.—The words "or are otherwise defective or invalid" show that the intention of Congress in enacting the law was to cover any and all defects in indemnity school selections. It follows that where land had been listed and certified to the state, if the selection failed by reason of any defect or invalidity,

it was made good and such defect or invalidity cured. The state, therefore, having title to the land, could issue a valid patent therefor, and a patent subsequently issued for the same land by the United States is void. *Daniels v. Gualala Mill Co.*, (1888) 77 Cal. 300.

Particular defects reached by statute.—“Clearly, such selections as had been made and certified in lieu of sixteenth and thirty-sixth sections, lying within Mexican grants, of which grants the final survey had not been made at the date of the selection by the state, were confirmed; for such is the clear and unequivocal language of the first section of the Act of Congress. Clearly, also, such selections as had been made and certified to the state, which should fail by reason of the land in lieu of which they were taken not being included within the final survey of a Mexican grant, were confirmed; for such is the clear and unequivocal language of the second section of the Act. Equally clear and unequivocal is the language of section 2, in which are confirmed such selections as were made and certified to the state, and which would fail by reason of other defects or invalidities than those previously enumerated. One such invalidity existed in the case under consideration, to wit, the selection of land at the time within the claimed limits of a Mexican grant, but which were finally excluded therefrom. Such defect clearly comes within the letter as well as the intent of the statute, which is a curative Act, designed to quiet the possession and confirm the claim of those who, in good faith, purchased from the state, thinking they thereby got a title, but who in law did not, and which upon well-settled principles should be liberally construed.” *Martin v. Durand*, (1883) 63 Cal. 39.

Where there was no sixteenth or thirty-sixth section, in lieu of which an indemnity selection has been made, no title to the land embraced by such selection passes to the state. (1878) 16 Op. Atty-Gen. 69.

Double selection not authorized.—Where two or more indemnity selections have been made in lieu of the same sixteenth or thirty-sixth section, the state is entitled to but one of the indemnity selections; there being nothing in the Act of March 1, 1877, from which it can be fairly inferred that double selections were meant to be ratified, and that the state should thus obtain a greater quantity of land than had originally been allowed by law for school purposes. (1878) 16 Op. Atty-Gen. 69.

Validating Act equivalent to new grant.—The ratification by the United States in the passage of this Act of the prior defective listing of lands was equivalent to a grant of those lands to the state as of the date of the listing, Feb. 5, 1870, and validates the listing as though the lands had belonged to the state at the time of the passage of the Act. *People v. Noyo Lumber Co.*, (1893) 99 Cal. 466.

Who are innocent purchasers.—The first proviso of the above section contemplates only prior purchasers for valuable considerations. There could be no object in protecting those who had paid nothing, nor can such persons be held to be described by the term “innocent purchasers for a valuable consideration.” *U. S. v. Hendy*, (1893) 54 Fed. Rep. 447; *Durand v. Martin*, (1887) 120 U. S. 447.

Rights of innocent purchasers—burden of proof.—An innocent purchaser for a valuable consideration of lieu lands selected by the state, where there is no 16th or 36th section, has a preferred right to purchase the same from the United States, and when he has received a patent therefor he is not called upon to support the validity of his patent with proof of the fact that it has been issued to him under the provisions of this section, but it devolves upon the party assailing his patent to allege and to show that under no circumstances were the officers of the land department authorized in issuing the patent to the patentee. *Burling v. Thompson*, (1888) 77 Cal. 257.

Decisions of department of interior final.—Whether lands are held by an innocent purchaser for a valuable consideration is a question of fact, or a mixed question of law and fact, and where the court cannot so separate it as to see clearly that there is a mistake of law, the decision of the department of the interior in regard to the question is final. *Green v. Hayes*, (1886) 70 Cal. 276.

Confirmed listment not subject to cancellation.—The secretary of the interior has no authority to cancel a listment of lands to the state of California in lieu of the 16th section made on the first day of July, 1870, and confirmed by the above Act, and the issuance of a patent of the United States in pursuance of an attempted cancellation is void and subject to collateral attack. *Cucomonga Fruit-Land Co. v. Moir*, (1890) 83 Cal. 101.

Suit for lands listed by mistake—parties.—Where a bill in equity is brought by the United States to recover lands alleged to have been listed to the state under this Act by mistake, and sold by the state to an individual, the state is not a necessary party. *U. S. v. Hendy*, (1893) 54 Fed. Rep. 447, following *Williams v. U. S.*, (1891) 138 U. S. 514.

Where a school selection is found in disputed territory outside the limits of an unsettled survey by the United States of a private claim, and the proper officers of the United States approve such selection and issue the proper certified list, and a purchaser under such a title enters into possession of the land and improves, cultivates, and holds it, no one by forcibly or surreptitiously getting into possession can make a pre-emption settlement which will defeat his title. *Mower v. Fletcher*, (1886) 116 U. S. 380. See also *Hambleton v. Duhain*, (1886) 71 Cal. 136.

SEC. 3. [Confirmation not to extend to claims of actual settlers.] That the foregoing confirmation shall not extend to the lands settled upon by any actual

settler claiming the right to enter not exceeding the prescribed legal quantity under the homestead or pre-emption laws: *Provided*, That such settlement was made in good faith upon lands not occupied by the settlement or improvement of any other person, and prior to the date of certification of said lands to the State of California by the Department of the Interior: *And provided further*, That the claim of such settler shall be presented to the register and receiver of the district land-office, together with the proper proof of his settlement and residence, within twelve months after the passage of this act, under such rules and regulations as may be established by the Commissioner of the General Land Office. [19 Stat. L. 268.]

Necessity for presentation of claim within time specified.—In an action of ejectment by one claiming title through a patent from the state of California, against one who had settled upon lands prior to their listing but after they had been selected by the state in lieu of the 36th section, allowed within a Mexican grant of which the final survey had not been made, where it appeared that the defendant had failed to present his claim

to the register and receiver of the district land office, together with proper proof of his settlement and residence within twelve months after the passage of this Act, it was held that he did not come within the saving clause of this section and that, therefore, the title of the state, though originally void, was validated by the Act, and that the plaintiffs were entitled to recover. *Hellman v. Jones*, (1880) 56 Cal. 462.

SEC. 4. [*Act not to apply to mineral lands nor lands in San Francisco.*] That this act shall not apply to any mineral lands, nor to any lands in the city and county of San Francisco, nor to any incorporated city or town, nor to any tide, swamp, or overflowed lands. [19 Stat. L. 268.]

SEC. 7. [*School lands in Colorado.*] That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands, equivalent thereto, in legal subdivisions of not more than one quarter-section, and as contiguous as may be, are hereby granted to said State for the support of common schools. [18 Stat. L. 475.]

This and sections 12, 14, 15 following are from the Act of March 3, 1875, ch. 139, "An Act to enable the people of Colorado to form a constitution and State government, and

for the admission of the said State into the Union on an equal footing with the original States."

SEC. 12. [*Five per cent. of sales of public lands for internal improvements.*] That five per centum of the proceeds of the sales of agricultural public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making such internal improvements within said State as the legislature thereof may direct: *Provided*, That this section shall not apply to any lands disposed of under the homestead laws of the United States, or to any lands now or hereafter reserved for public or other uses. [18 Stat. L. 476.]

See note under section 7, *supra*.

Character of improvements authorized.—It must not be understood from the language of this section that there are no limitations upon the powers of the legislature respecting the nature of the internal improvements for which the fund hereby created is to be used. The improvements must be of a fixed and permanent nature, as improvements of real property, and must be such improvements as

are designated and intended for the benefit of the public. Appropriation for transient objects, as for personalty, as well as appropriations to promote private or individual enterprises, would be contrary to the intention of the general government as donor of the fund. The character and purpose of the "buildings for state institutions" contemplated by the question are not stated; but whatever their character or purpose, it would

seem clear that no part of such internal improvement fund can be lawfully appropriated to defray the current expenses of carrying on state institutions. *In re* Internal Improvements, (1893) 18 Colo. 317.

Public reservoirs for the storage of water for irrigation and domestic uses are internal improvements within the meaning of the statute, and the general assembly may law-

fully make appropriations therefor from the fund provided by the statute for internal improvements. And there appears to be no objection to appropriate the fund in question for the purpose of diverting water from natural streams and storing the same in reservoirs for the uses enumerated, due regard being had for all prior water rights. Internal Imp. Fund, (1888) 12 Colo. 287.

SEC. 14. [*School fund.*] That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school-fund, the interest of which to be expended in the support of common schools. [18 Stat. L. 476.]

See note under section 7, *supra*.

SEC. 15. [*Mineral lands excepted.*] That all mineral lands shall be excepted from the operation and grants of this act. [18 Stat. L. 476.]

See note under section 7, *supra*.

SEC. 10. [*Grant of school lands to North Dakota, South Dakota, Montana, and Washington.*] That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in the Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain. [25 Stat. L. 679.]

This and secs. 11-19 following are from the Act of Feb. 22, 1889, ch. 180, "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States."

Washington to receive full sections. — It is obvious that Congress intended that Washington should receive full sections 16 and 36, or in case of a failure by reason of prior settlement or from natural causes, the equivalent of such sections, and designated the secretary of the interior as the officer to approve any selections made by the territory. *Johanson v. Washington*, (1903) 190 U. S. 183, *affirming* (1901) 26 Wash. 671.

The word "embraced," used in the proviso of the above section, refers only to such lands as form constituent parts of the reservation. *Hibberd v. Slack*, (1897) 84 Fed. Rep. 571.

Subsequent entries under timber and stone or mining laws void. — Under the Act of Congress reserving sections 16 and 36 in each township in Washington territory for the purpose of being applied to its common schools, and the enabling Act, making a present grant of such sections to the state to take effect as soon as the state should be organized, an entry made upon such school sections subsequent to their survey and to the approval of said enabling Act is void, whether entered under the timber and stone Act or under the mining laws. *Wheeler v. Smith*, (1893) 5 Wash. 704.

SEC. 11. [*Sale or lease of school lands.*] That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school-fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only. [25 Stat. L. 679.]

See note to section 10, *supra*.

The clause "all lands herein granted" is not confined in meaning to the lands granted in section 10 for common-school purposes. Section 11 is an independent section; and it seems conclusive that Congress intended to make it refer not only to the preceding section, but to the whole Act, and that the words "herein" and "educational purposes" were used advisedly and refer to all lands granted for such purposes in the whole Act. *State v. Maynard*, (1903) 31 Wash. 132.

Conflicting statute void.—A statute of the state of Washington providing for the creation of a state normal school fund into which

shall be paid all proceeds from the sales of lands granted to the state of Washington by the United States for normal schools, and authorizing the payment of the costs of the erection of the normal school buildings from such fund, is void because in conflict with the provision of the above section of the enabling Act "that all lands herein granted for educational purposes shall be disposed of only at public sale, * * * the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools." *State v. Maynard*, (1903) 31 Wash. 132.

SEC. 12. [*Lands for public buildings.*] That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said States, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said States for the purpose of erecting public buildings at the capital of said States for legislative, executive, and judicial purposes. [25 Stat. L. 680.]

See note to section 10, *supra*.

SEC. 13. [*Five per cent. of proceeds of public land sales for school fund.*] That five per centum of the proceeds of the sales of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively. [25 Stat. L. 680.]

See note to section 10, *supra*.

SEC. 14. [*University lands—sale of—control of educational institutions.*] That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States, and any portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective States aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said States

severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the State of Washington for the purposes of a university in said State. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the Territory of Dakota, for an asylum for the insane shall, upon the admission of said State of South Dakota into the Union, become the property of said State. [25 Stat. L. 680.]

See note to section 10, *supra*.

Particular provisions construed.—The purpose of the provision, "None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section 11 of this Act," was evidently to avoid the possibility of a construction that university lands might be sold, under the provisions of the Act of 1854, at less than ten dollars per acre. *State v. Maynard*, (1903) 31 Wash. 132.

The clause "in like manner," used in the grant to the state of Washington for the purpose of a university, contained in the above section, refers to the preceding provisions and means that "the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes." *State v. Maynard*, (1903) 31 Wash. 132.

Provision for University of Washington not exclusive.—The above provision for the University of Washington does not exclude the university from the benefit of section 17 of

the enabling Act granting two hundred thousand acres for "state, charitable, educational and reformatory institutions." *State v. Callvert*, (1904) 34 Wash. 58.

Provision of enabling Act modified by state constitution.—Although the Act of Congress enabling the territory of Washington to form a state and be admitted to the Union may have granted to the state certain lands for the support of public schools upon the condition subsequent that such lands should be sold only at public auction and for not less than ten dollars per acre, yet, where the constitution as adopted by the people and accepted by the federal government provides for the confirmation of sales of such lands theretofore made under the authority of territorial laws, the provisions of the enabling Act must be construed as modified thereby. *Romine v. State*, (1893) 7 Wash. 215.

North and South Dakota each entitled to grant.—The states of North Dakota and South Dakota each take seventy-two sections of land for university purposes. (1890) 19 Op. Atty-Gen. 635.

SEC. 15. [Grant of land for penitentiaries.] That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby, granted, together with any unexpended balances of the moneys appropriated therefor by said act to said State of South Dakota, for the purposes therein designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the Territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the State of Montana. [25 Stat. L. 680.]

See note to section 10, *supra*.

See also PRISONS AND PRISONERS, *ante*, p. 23.

SEC. 16. [*Lands for agricultural colleges.*] That ninety thousand acres of land, to be selected and located as provided in section ten of this act, are hereby granted to each of said States, except to the State of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said States, as provided in the acts of Congress making donations of lands for such purpose. [25 Stat. L. 681.]

See note to section 10, *supra*.

SEC. 17. [*Grants of lands for internal improvements in lieu of grants by other acts, etc.*] That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said States, the following grants of land are hereby made, to wit:

To the State of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for State normal schools, eighty thousand acres; for public buildings at the capital of said State, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said State may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the State of North Dakota a like quantity of land as is in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for State normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a State reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the State, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the State of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for public buildings at the State capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective States may severally provide. [25 Stat. L. 681.]

See note to section 10, *supra*.

Construction of concluding provisions. — The concluding provision of this section refers to the manner of holding and of appro-

priating and of disposing of lands, and must be construed with reference to the limitations contained in section 11 as to lands granted for educational purposes. The manner of the

disposition or the sale of such lands and the manner of the holding or the investment of the proceeds, and the appropriation of the interest or income, is subject to the limitations in section 11 of this Act. *State v. Maynard*, (1903) 31 Wash. 132.

Benefits extending to university of Washington.—The Washington statutes assigning and directing the selection of one hundred thousand acres of state lands for the support of the state university are not unconstitutional on the theory that inasmuch as section 14 of the enabling Act makes a special provision of forty-two thousand and eighty acres for the university, the intent was to exclude it from the benefits of section 17, granting two hundred thousand acres for "state, charitable, educational and reformatory institutions;" since no educational institution is excluded from the benefits of said grant, and the amount that may be appropriated therefrom to the use of any one institution is a question of public policy, to be determined exclusively by the legislature. *State v. Callvert*, (1904) 34 Wash. 58.

Grant in nature of trust—Washington statute.—Under the enabling Act of Congress granting to the state of Washington one hundred and thirty thousand acres of public lands for the erection of public buildings at the state capital, sixty-five thousand

acres of which have been selected and are now held for sale by the state, and under the Act of March 2, 1893 (Laws of Wash., p. 462), creating a "state capitol building fund," into which the proceeds derived from the sales of such granted lands are to be paid, and making provision for the appropriation of certain sums therefrom for the erection of public buildings, it is the duty of the state auditor, although no moneys may have been accumulated in the fund, to issue warrants thereon to parties entitled, provided that such warrants express upon their face that they are drawn upon the "state capitol building fund" and are payable only as that fund may be accumulated from the sale of lands. This grant was in the nature of a trust imposed upon the state to select a number of acres granted and apply the proceeds of land sold to the purposes enumerated. *Allen v. Grimes*, (1894) 9 Wash. 424.

Land covered by flow of tide.—A tract of land shown by the public surveys to be a portion of a bay, which is covered and uncovered by the flow and ebb of the tide, is not "land" but "water," to which the public or special and private land laws of the United States have no application. *Baer v. Moran Bros. Co.*, (1891) 2 Wash. 608.

SEC. 18. [Mineral lands excepted—*lieu* lands.] That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and the benefit of the common schools of said States. [25 Stat. L. 681.]

See note to section 10, *supra*.

SEC. 19. [Selections, how made—deductions.] That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects. [25 Stat. L. 682.]

See note to section 10, *supra*.

[Preference right to select lands.] * * * That the States of North Dakota, South Dakota, Montana, Idaho, and Washington shall have a preference right over any person or corporation to select lands subject to entry by said States granted to said States by the act of Congress approved February twenty-second, eighteen hundred and eighty-nine, for a period of sixty days after lands have been surveyed and duly declared to be subject to selection and entry under the general land laws of the United States: *And Provided further*, That such preference right

shall not accrue against bona fide homestead or pre-emption settlers on any of said lands at the date of filing of the plat of survey of any township in any local land office, of said States. * * * [27 Stat. L. 592.]

This is from the Sundry Civil Appropriation Act of March 3, 1893, ch. 208.

SEC. 4. [Grant of school lands to Idaho.] That sections numbered sixteen and thirty-six in every township of said State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior. [26 Stat. L. 215.]

This and sections 5-14 following are from the Act of July 3, 1890, ch. 656, "An act to provide for the admission of the State of Idaho into the Union."

Right of eminent domain not suspended.
—The Act of Congress approved July 3,

1890, known as the Idaho Admission Act, does not prohibit or restrict the right of eminent domain over the lands granted to the state by said Act. *Hollister v. State*, (Idaho 1903) 71 Pac. Rep. 541.

SEC. 5. [Sale or lease of school lands.] That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only. [26 Stat. L. 216.]

See note to section 4, *supra*.

SEC. 6. [Grant of lands for public buildings.] That fifty sections of the unappropriated public lands within said State, to be selected and located in legal subdivisions as provided in section four of this act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State for legislative, executive, and judicial purposes. [26 Stat. L. 216.]

See note to section 4, *supra*.

SEC. 7. [Five per cent. of proceeds of sales of public lands for school fund.] That five per centum of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State. [26 Stat. L. 216.]

See note to section 4, *supra*.

SEC. 8. [University lands — sale — proceeds, how applied.] That the lands granted to the Territory of Idaho by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby

vested in the State of Idaho to the extent of the full quantity of seventy-two sections to said State, and any portion of said lands that may not have been selected by said Territory of Idaho may be selected by the said State; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said State, and the income thereof be used exclusively for university purposes. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. [26 Stat. L. 216.]

See note to section 4, *supra*.

SEC. 9. [*Grants penitentiary and personal property.*] [*Executed.*]

SEC. 10. [*Lands for agricultural college.*] That ninety thousand acres of land, to be selected and located as provided in section four of this act, are hereby granted to said State for the use and support of an agricultural college in said State, as provided in the acts of Congress making donations of lands for such purposes. [26 Stat. L. 216.]

See note to section 4, *supra*.

SEC. 11. [*Swamp and overflowed lands, and saline lands — grant of lieu lands for certain purposes.*] That in lieu of the grant of land for purposes of internal improvement made to the new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to the State of Idaho, and in lieu of any claim or demand by the said State under the act of September twenty-eighth eighteen hundred and fifty, and section twenty four hundred and seventy nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the State of Idaho, and in lieu of any grant of saline lands to said State the following grants of lands are hereby made, to wit: To the State of Idaho: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State Normal schools, one hundred thousand acres; for the support and maintenance of the insane-asylum located at Blackfoot, fifty thousand acres; for the support and maintenance of the State University located at Moscow, fifty thousand acres; for the support and maintenance of the penitentiary located at Boise City, fifty thousand acres; for other State, charitable, educational, penal, and reformatory institutions, one hundred and fifty thousand acres. None of the lands granted by this act shall be sold for less than ten dollars an acre. [26 Stat. L. 216.]

See note to section 4, *supra*.

SEC. 12. [*Grants limited to specific use.*] That the State of Idaho shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purpose herein mentioned, in such manner as the legislature of the State may provide. [26 Stat. L. 217.]

See note to section 4, *supra*.

SEC. 13. [*Mineral lands excepted from grants — lieu lands.*] That all mineral lands shall be exempted from the grants by this act. But if sections sixteen and thirty-six, or any subdivision, or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, the said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State, in lieu thereof, for the use and the benefit of the common schools of said State. [26 Stat. L. 217.]

See note to section 4, *supra*.

SEC. 14. [*Selections, how made — deductions.*] That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed unreserved, and unappropriated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects. [26 Stat. L. 217.]

See note to section 4, *supra*.

An act to appropriate lands for the support of schools in certain fractional townships in the State of Missouri.

[Act of June 22, 1874, ch. 422, 18 Stat. L. 202.]

[SEC. 1.] [*Reservation and selection of school lands in Missouri.*] That for all fractional townships in the State of Missouri, which are entitled to public lands for the support of schools, according to the provisions of the act of Congress approved May twentieth eighteen hundred and twenty-six entitled, "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for," and for which no selections have heretofore been made, there shall be reserved and appropriated out of the public lands, for each of said fractional townships, the amount of land to which they were respectively entitled according to the provisions of said act. [18 Stat. L. 202.]

The provisions of Act of May 20, 1826, ch. 83, referred to above, are incorporated into the Revised Statutes as sections 2275, 2276, given *infra*, under div. XVI.

SEC. 2. [*Manner of selection and tenure of title.*] That the lands to which said fractional townships are entitled as aforesaid shall be selected by the Commissioner of the General Land-Office out of any unappropriated public land within the State of Missouri subject to sale or location at one dollar and twenty-five cents an acre: *Provided*, That said Commissioner, in making such selection, shall select such land as shall be designated to him for that purpose by the county courts of the counties in which such fractional townships are situated; and, when so selected, said lands shall be held by the same tenure, and upon the same terms, for the support of schools in such fractional townships, as sections numbered sixteen are, or may be, held in the State of Missouri. [18 Stat. L. 202.]

An act to grant the State of Nevada lands in lieu of the sixteenth and thirty-sixth sections in said State.

[Act of June 16, 1880, ch. 245, 21 Stat. L. 287.]

[*Preamble.*] Whereas, the legislature of the State of Nevada on March eighth, eighteen hundred and seventy-nine, passed an act accepting from the

United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections therein, and relinquishing to the United States all such sixteenth and thirty-sixth sections in said State as have not been heretofore sold or disposed of by said State, and which act of said State is in words as follows, to wit:

"An act accepting from the United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections, and relinquishing to the United States all such sixteenth and thirty-sixth sections as have not been sold or disposed of by the State.

"The people of the State of Nevada represented in Senate and assembly do enact as follows:

"SECTION 1. The State of Nevada hereby accepts from the United States not less than two millions of acres of land in the State of Nevada in lieu of the sixteenth and thirty-sixth sections heretofore granted to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by the State prior to the enactment of any such law of Congress granting such two millions or more acres of land to the State shall not be changed or vitiated in consequence of or by virtue of such act of Congress granting such two millions or more acres of land, or in consequence of or by virtue of this act surrendering and relinquishing to the United States the sixteenth and thirty-sixth sections unsold or undisposed of at the time such grant is made by the United States.

"SEC. 2. The State of Nevada, in consideration of such grant of two millions or more acres of land by the United States, hereby relinquishes and surrenders to the United States all its claim and title to such sixteenth and thirty-sixth sections in the State of Nevada heretofore granted by the United States as shall not have been sold or disposed of subsequent to the passage of any act of Congress that may hereafter be made granting such two millions or more acres of land to the State of Nevada: *Provided*, That the State of Nevada shall have the right to select the two millions or more acres of land mentioned in the act":

Therefore,

[SEC. 1.] [*Grant to Nevada in lieu of sixteenth and thirty-sixth sections.*] That there be, and are hereby, granted to the State of Nevada two million acres of land in said State in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this act shall not be changed or vitiated in consequence of or by virtue of this act. [21 Stat. L. 287.]

SEC. 2. [*Lands, how selected.*] The lands herein granted shall be selected by the State authorities of said State from any unappropriated, non-mineral, public land in said State, in quantities not less than the smallest legal subdivision; and when selected in conformity with the terms of this act the same shall be duly certified to said State by the Commissioner of the General Land Office and approved by the Secretary of the Interior. [21 Stat. L. 288.]

SEC. 3. [*Disposal of lands and proceeds.*] The lands herein granted shall be disposed of under such laws, rules, and regulations as may be prescribed by the legislature of the State of Nevada: *Provided*, That the proceeds of the sale thereof shall be dedicated to the same purposes as heretofore provided in

the grant of the sixteenth and thirty-sixth sections made to said State. [21 Stat. L. 288.]

SEC. 4. [*In effect.*] This act shall take effect from and after its passage. [21 Stat. L. 288.]

An Act To make certain grants of land to the Territory of New Mexico, and for other purposes.

[Act of June 21, 1898, ch. 489, 30 Stat. L. 484.]

[SEC. 1.] [*Grant of school lands to New Mexico.*] That sections numbered sixteen and thirty-six in every township of the Territory of New Mexico, and where such sections, or any parts thereof, are mineral or have been sold or otherwise disposed of by or under the authority of any Act of Congress, other non-mineral lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said Territory for the support of common schools, such indemnity lands to be selected within said Territory in such manner as is hereinafter provided: *Provided*, That the sixteenth, and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this Act; but such reservations shall be subject to the indemnity provisions of this Act. [30 Stat. L. 484.]

SEC. 2. [*Lands for public buildings.*] That fifty sections of the unappropriated non-mineral lands within said Territory, to be selected and located in legal subdivisions as hereinafter provided in this Act, shall be, and are hereby, granted to said Territory for the purpose of erecting public buildings at the capital of the State of New Mexico when said Territory shall become a State and be admitted into the Union, when said capital shall be permanently located by the people of New Mexico, for legislative, executive, and judicial purposes. [30 Stat. L. 484.]

SEC. 3. [*Lands for university and agricultural college.*] That lands to the extent of two townships in quantity, authorized by the sixth section of the Act of July twenty-second, eighteen hundred and fifty-four, to be reserved for the establishment of a university in New Mexico, are hereby granted to the Territory of New Mexico for university purposes, to be held and used in accordance with the provisions in this section, and any portions of said lands that may not have been heretofore selected by said Territory may be selected now by said Territory. That in addition to the above, sixty-five thousand acres of non-mineral, unappropriated and unexcused public land to be selected and located as hereinafter provided, together with all other lands in said Territory, are hereby granted to the said Territory for the use of said university, and one hundred thousand acres to be in like manner selected for the use of an agricultural college. That the proceeds of the sale of said lands or any portion thereof shall be set aside and the same to be solely invested, and the income therefrom to be used exclusively for the purposes of such university and agricultural college respectively. [30 Stat. L. 484.]

SEC. 4. [*Provision for the support of the school fund.*] That the proceeds of the sale of the lands lying within said Territory, to be selected and located as hereinafter provided, shall be paid to the said Territory for the support of the school fund. [30 Stat. L. 484.]

the said Territory, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said Territory. [30 Stat. L. 485.]

SEC. 5. [*Schools, etc., under control of Territory.*] That the schools, colleges, and university provided for in this Act shall forever remain under the exclusive control of said Territory, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or of the income thereof, shall be used for the support of any sectarian or denominational school, college, or university. [30 Stat. L. 485.]

SEC. 6. [*Lands for internal improvements, and certain institutions.*] That in lieu of the grant of land for purposes of internal improvement, made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to New Mexico, and in lieu of any claim or demand of the State of New Mexico, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and twenty-nine of the Revised Statutes, making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of New Mexico, the following grants of non-mineral, and unappropriated land are hereby made to said Territory for the purposes indicated, namely:

For the establishment of permanent water reservoirs for irrigating purposes, five hundred thousand acres; for the improvement of the Rio Grande in New Mexico, and the increasing of the surface flow of the water in the bed of said river, one hundred thousand acres; for the establishment and maintenance of an asylum for the insane, fifty thousand acres; for the establishment and maintenance of a school of mines, fifty thousand acres; for the establishment and maintenance of an asylum for the deaf and dumb, fifty thousand acres; for the establishment and maintenance of a reform school, fifty thousand acres; for the establishment and maintenance of normal schools, one hundred thousand acres; for the establishment and maintenance of an institution for the blind, fifty thousand acres; for a miners' hospital for disabled miners, fifty thousand acres; for the establishment and maintenance of a military institute, fifty thousand acres; for the enlargement and maintenance of the Territorial penitentiary, fifty thousand acres. The building known as the Palace, in the city of Santa Fe, and all lands and appurtenances connected therewith and set apart and used therewith, are hereby granted to the Territory of New Mexico. [30 Stat. L. 485.]

SEC. 7. [*Grants in this act only partial.*] That this Act is intended only as a partial grant of the lands to which said Territory may be entitled upon its admission into the Union as a State, reserving the question as to the total amount of lands to be granted to said Territory until the admission of said Territory as a State shall be determined on by Congress. [30 Stat. L. 485.]

SEC. 8. [*Selection of lands.*] That all grants of land made in quantity or as indemnity by this Act shall be selected by the governor of the Territory of New Mexico, the surveyor-general of the Territory of New Mexico, and the solicitor-general of said Territory, acting as a commission, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said Territory of New Mexico. [30 Stat. L. 485.]

SEC. 9. [*Procedure on selection of lands.*] That said commission shall proceed, upon the passage of this Act, to select said lands, for each purpose as

and not less than one-quarter section of land shall be sold to the highest bidder, and the proceeds of such sales, after deducting the actual expenses necessarily incurred in connection with the execution thereof, shall be paid to the credit of separate funds for the use of said institutions or purposes for which the respective grants of lands are made: *Provided*, That such legislative assembly may provide for leasing all or any part of the lands granted in this Act on the same terms and under the same limitations prescribed above as to the lands that may be leased only, but all leases made under the provisions of this Act shall be subject to the approval of the Secretary of the Interior, and all investments made or securities purchased with the proceeds of sales or leases of lands provided for by this Act shall be subject to like approval by the Secretary of the Interior. [30 Stat. L. 485.]

Section 11. [Appropriation.] The proceeds of the sale of lands and the proceeds of the leasing of lands, after deducting the actual expenses necessarily incurred in connection with the execution thereof, shall be paid to the credit of separate funds for the use of said institutions or purposes for which the respective grants of lands are made: *Provided*, That such legislative assembly may provide for leasing all or any part of the lands granted in this Act on the same terms and under the same limitations prescribed above as to the lands that may be leased only, but all leases made under the provisions of this Act shall be subject to the approval of the Secretary of the Interior, and all investments made or securities purchased with the proceeds of sales or leases of lands provided for by this Act shall be subject to like approval by the Secretary of the Interior. [30 Stat. L. 485.]

Section 12. [Repeal.] That all acts and parts of acts in conflict with the provisions of this Act, whether passed by the legislative assembly of said Territory or by Congress, are hereby repealed. [30 Stat. L. 486.]

SEC. 11. [Appropriation.]

SEC. 12. [Repeal.] That all acts and parts of acts in conflict with the provisions of this Act, whether passed by the legislative assembly of said Territory or by Congress, are hereby repealed. [30 Stat. L. 486.]

SEC. 18. [*Reservation of school lands in Oklahoma.*] That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same. In all cases where sections sixteen and thirty-six, or either of them, are occupied by actual settlers prior to survey thereof, the county commissioners of the counties in which such sections are so occupied are authorized to locate other lands, to an equal amount, in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied. * * * [26 Stat. L. 89.]

This is from the Act of May 2, 1890, ch. 182, "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States

Court in the Indian Territory, and for other purposes." Other provisions of the Act relating to public lands are set forth *supra*, p. 414

SEC. 36. [*Lease of school lands in Oklahoma.*] That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress, may be leased for a period not exceeding three years for the benefit of the school fund of said Territory by the governor thereof, under regulations to be prescribed by the Secretary of the Interior. [26 Stat. L. 1043.]

This and section 38 following are from the Indian Appropriation Act of March 3, 1891, ch. 543. For other provisions of the Act, see *supra*, p. 418.

SEC. 38. [*Sections reserved for schools in Oklahoma.*] No provision for settlement on or sale of the lands in the various agreements hereinbefore mentioned shall apply to sections sixteen and thirty-six thereon, which land[s] in the States are hereby granted to the State in which they are situated, for the support of the common schools of such State under the limitations prescribed by law, and such sections in the Territories of the United States are reserved from occupancy, entry, or sale, under any land law of the United States; but this provision shall not apply to mineral land which may be disposed of under the laws applicable thereto. [26 Stat. L. 1044.]

See note to section 36, *supra*.

An act to ratify the reservation of certain lands made for the benefit of Oklahoma Territory, and for other purposes.

[Act of May 4, 1894, ch. 68, 28 Stat. L. 71.]

[*Reservations in Oklahoma for school and public buildings.*] That the reservation for university, agricultural college, and normal school purposes, of section thirteen in each township, of the lands known as the Cherokee Outlet, the Tonkawa Indian Reservation, and the Pawnee Indian Reservation, in the Territory of Oklahoma, not otherwise reserved or disposed of, and the reservation for public buildings of section thirty-three in each township of said lands, not otherwise disposed of, made by the President of the United States in his proclamation of August nineteenth, eighteen hundred and ninety-three, be, and the same are hereby, ratified, and all of said lands and all of the school lands in said Territory may be leased under such laws and regulations

as may be hereafter prescribed by the legislature of said Territory; but until such legislative action the governor, secretary of the Territory, and superintendent of public instruction shall constitute a board for the leasing of said lands under the rules and regulations heretofore prescribed by the Secretary of the Interior, for the respective purposes for which the said reservations were made, except that it shall not be necessary to submit said leases to the Secretary of the Interior for his approval; and all necessary expenses and costs incurred in the leasing, management, and protection of said lands and leases may be paid out of the proceeds derived from such leases. [28 Stat. L. 71.]

Cherokee Outlet.—See Act of March 3, 1893, ch. 209, sec. 10, 27 Stat. L. 640-643.

Toankawa Indian reservation.—See Act of March 3, 1893, ch. 209, secs. 11, 13, 27 Stat. L. 643, 644.

Pawnee Indian reservation.—See Act of

March 3, 1893, ch. 209, secs. 12, 13, 27 Stat. L. 644.

Oklahoma public lands.—See Act of May 2, 1890, ch. 182, *supra*, p. 414.

Proclamation of President referred to in text is Proc. of Aug. 19, 1893, No. 5, 28 Stat. L. 1222.

SEC. 4. [School lands in Greer county, Oklahoma.] Sections numbered sixteen and thirty-six are reserved for school purposes as provided in laws relating to Oklahoma, and sections thirteen and thirty-three in each township are reserved for such purpose as the legislature of the future State of Oklahoma may prescribe. That whenever any of the lands reserved for school or other purposes under this Act, or under the laws of Congress relating to Oklahoma, shall be found to have been occupied by actual settlers or for town-site purposes or homesteads prior to March sixteenth, eighteen hundred and ninety-six, an equal quantity of indemnity lands may be selected as provided by law.

This and section 3 following are from the Act of Jan. 13, 1897, ch. 62, set forth *supra*, p. 42.

SEC. 3. [Lands reserved for churches.] That all lands which on March sixteen, eighteen hundred and ninety-six, are occupied for church, cemetery, school, or other educational or religious purposes are for profit, not exceeding two acres in each case, shall be granted to the proper authorities in charge thereof, under such rules and regulations as the Secretary of the Interior shall make, at more than one of the Government price therein, excepting for school purposes.

See also 27 Stat. L. 644.

SEC. 5. [Lands reserved for churches.] That upon the expiration of said March sixteen, eighteen hundred and ninety-six, the sections numbered sixteen and thirty-six in each township shall be reserved for school purposes, and the sections numbered thirteen and thirty-three in each township shall be reserved for such purpose as the legislature of the future State of Oklahoma may prescribe. That whenever any of the lands reserved for school or other purposes under this Act, or under the laws of Congress relating to Oklahoma, shall be found to have been occupied by actual settlers or for town-site purposes or homesteads prior to March sixteenth, eighteen hundred and ninety-six, an equal quantity of indemnity lands may be selected as provided by law.

poses shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain. [28 Stat. L. 109.]

This and sections 7-13 following are from the Act of July 16, 1894, ch. 138, "An Act to enable the people of Utah to form a constitution and State government and to be admitted into the Union on an equal footing with the original States."

See R. S. secs. 1946, 2275, 2276, *supra*, pp. 460, 462 *et seq.*

Effect of statute. — This grant took effect on Jan. 4, 1896, the date of the admission of the state to the Union, and lands inclosed

within the specified sections passed to the state on that date, and the maintenance of an inclosure upon one of such sections which may theretofore have been unlawful is no longer so; no law of the United States is violated and no right or interest is affected, and consequently the right abating it, under the Act of Feb. 25, 1885, entitled "an act to prevent unlawful occupancy of public lands," is lost. U. S. v. Elliott, (1896) 74 Fed. Rep. 92.

SEC. 7. [*Lands for public buildings.*] That upon the admission of said State into the Union, in accordance with the provisions of this Act, one hundred sections of the unappropriated lands within said State to be selected and located in legal subdivisions as provided in section six of this Act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State, when permanently located, for legislative, executive, and judicial purposes. [28 Stat. L. 109.]

See note to section 6, *supra*.

SEC. 8. [*University and agricultural college lands—proceeds, how invested.*] That lands to the extent of two townships in quantity, authorized by the third section of the Act of February twenty-one, eighteen hundred and fifty-five, to be reserved for the establishment of the University of Utah, are hereby granted to the State of Utah for university purposes, to be held and used in accordance with the provisions of this section; and any portions of said lands that may not have been selected by said Territory may be selected by said State. That in addition to the above, one hundred and ten thousand acres of land, to be selected and located as provided in the foregoing section of this Act, and including all saline lands in said State, are hereby granted to said State, for the use of the said university, and two hundred thousand acres for the use of an agricultural college therein. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested and held by said State; and the income thereof to be used exclusively for the purposes of such university and agricultural college respectively. [28 Stat. L. 109.]

See note to section 6, *supra*.

SEC. 9. [*Five per cent. of proceeds of sales of lands for schools.*] That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 10. [*School fund.*] That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to preëmption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 11. [*State to control schools, etc.*] The schools, colleges, and university provided for in this Act shall forever remain under the exclusive control of said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or of the income thereof, shall be used for the support of any sectarian or denominational school, college, or university. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 12. [*Lands for public improvements — swamp lands.*] That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to said State, and in lieu of any claim or demand by the State of Utah under the Act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to said State of Utah, the following grants of land are hereby made to said State for the purposes indicated, namely:

For the establishment of permanent water reservoirs for irrigating purposes, five hundred thousand acres; for the establishment and maintenance of an insane asylum, one hundred thousand acres; for the establishment and maintenance of a school of mines in connection with the university, one hundred thousand acres; for the establishment and maintenance of a deaf and dumb asylum, one hundred thousand acres; for the establishment and maintenance of a reform school, one hundred thousand acres; for establishment and maintenance of State normal schools, one hundred thousand acres; for the establishment and maintenance of an institution for the blind, one hundred thousand acres; for a miners' hospital for disabled miners, fifty thousand acres. The United States penitentiary near Salt Lake City and all lands and appurtenances connected therewith and set apart and reserved therefor are hereby granted to the State of Utah.

The said State of Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the State may provide. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 13. [*Selection of lands.*] That all land granted in quantity or as indemnity by this Act shall be selected under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of said State of Utah. [28 Stat. L. 110.]

See note to section 6, *supra*.

An Act Granting to the University of Utah a site off the public domain.

[Act of July 23, 1894, ch. 151, 28 Stat. L. 117.]

[*Grant of lands to Utah for university.*] That there is hereby granted to the Territory of Utah, and to any State formed from the same, the following tract of land: Commencing on the west boundary line of the Fort Douglas military reservation at a point where it is intersected by the north line of Fourth South street in Salt Lake City, Utah Territory, and running thence north on said line one hundred and thirty-six rods, more or less, to a point where the south line of First South street, in said city, according to the plat thereof, intersects the said boundary line; thence running east seventy and eighty-one one-hundred-and-thirty-sixths rods; thence south parallel with said west boundary line one hundred and thirty-six rods, more or less, to a point due east of the point of beginning; thence running west seventy and eighty-six one-hundred-and-thirty-sixths rods, to the point of beginning, containing sixty acres, for a site and campus for the University of Utah, and upon the condition that such tract shall be occupied by the said university within five years after the passage of this Act, and perpetually thereafter; and in case it is not so occupied and used it shall revert to the United States. [28 Stat. L. 117.]

Extension of time, see the following Act.

An Act Extending the time within which the University of Utah shall occupy lands heretofore granted to it.

[Act of Jan. 8, 1897, ch. 7, 29 Stat. L. 483.]

[*Time to occupy lands for university extended.*] That the time within which the University of Utah shall occupy the lands granted to it by Act of July twenty-third, eighteen hundred and ninety-four, is hereby extended from five years to ten years thereafter; and the said Act is so amended that instead of five years it shall read ten years. [29 Stat. L. 483.]

An Act To make the provisions of an Act of Congress approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes, seven hundred and ninety-six), applicable to the State of Utah.

[Act of May 3, 1902, ch. 683, 32 Stat. L. 188.]

[SEC. 1.] [*Grant of school lands to Utah.*] That all the provisions of an Act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, which provides for the selection of lands for educational purposes in lieu of those appropriated for other purposes, be, and the same are hereby, made applicable to the State of Utah, and the grant of school lands to said State, including sections two and thirty-two in each township, and 'indemnity therefor, shall be administered and adjusted in accordance with the provisions of said Act, anything in the Act approved July sixteenth, eighteen hundred and ninety-four, providing for the admission of said State into the Union, to the contrary notwithstanding. [32 Stat. L. 188.]

The Act of Feb. 28, 1891, ch. 384, amends R. S. secs. 2275, 2276, and is incorporated in such sections. See *supra*, pp. 462 *et seq.*

SEC. 2. [*Sections added.*] That wherever the words "sections sixteen and thirty-six" occur in said Act, the same as applicable to the State of Utah shall read: "sections two, sixteen, thirty-two, and thirty-six," and wherever

the words "sixteenth and thirty-sixth sections" occur the same shall read: "second, sixteenth, thirty-second, and thirty-sixth sections," and whenever the words "sections sixteen or thirty-six" occur the same shall read: "sections two, sixteen, thirty-two, or thirty-six," and wherever the words "two sections" occur the same shall read "four sections." [32 Stat. L. 189.]

See note to section 1, *supra*.

An Act Relating to grants of land to the Territory and State of Washington for school purposes.

[Act of Dec. 18, 1902, ch. 5, 32 Stat. L. 756.]

[*Preamble.*] Whereas by the Act of Congress of February twenty-second, eighteen hundred and eighty-nine, providing that the inhabitants of the Territory of Washington might, upon certain conditions prescribed in said Act, become the State of Washington, certain lands were granted to the said State for school purposes; and

Whereas a doubt has arisen as to what lands were granted by section ten of said Act; and

Whereas by section twenty of the Act of Congress of March second, eighteen hundred and fifty-three, entitled "An Act to establish the Territorial government of Washington," the county commissioners of counties in said Territory were authorized to locate and select certain lands in lieu of sections sixteen and thirty-six occupied by actual settlers; and

Whereas by the Act of Congress of February twenty-sixth, eighteen hundred and fifty-nine, entitled "An Act to authorize settlers upon sixteenth and thirty-sixth sections, who settled before the surveys of public lands, to preempt their settlements," certain lands were appropriated for school purposes in lieu of such as might be patented by preemptors, and to compensate deficiencies for school purposes where said sections sixteen and thirty-six were fractional in quantity, or where one or both were wanting by reason of the township being fractional, or from any natural cause whatever, and providing for their selection; and

Whereas certain lieu lands have been selected by the Territory of Washington under said Acts of Congress: Therefore, [32 Stat. L. 756.]

[SEC. 1.] [*School lands in Washington — grant of lieu lands.*] That in all cases where sections sixteen and thirty-six, or either or any of them, or any portion thereof, have been occupied by actual settlers prior to survey thereof, and the county commissioners of the counties in which said sections so occupied as aforesaid are situated, have, under said Act of Congress of March second, eighteen hundred and fifty-three, located or selected other lands in sections or fractional sections, as the case may be, within their respective counties, in lieu of said section so occupied as aforesaid, the lands so located or selected, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State by said Act of February twenty-second, eighteen hundred and eighty-nine, and the title of said State thereto is hereby confirmed. [32 Stat. L. 757.]

SEC. 2. [*Same subject.*] That where any lands appropriated by Congress to said Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six were fractional in quantity, or where one or both were wanting by reason of the township being fractional, or from any natural cause whatever, or where section sixteen or thirty-six were patented by preemptors,

have been selected and appropriated as provided in said Act of Congress of February twenty-sixth, eighteen hundred and fifty-nine, the lands so selected and appropriated, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State of Washington by the said Act of February twenty-second, eighteen hundred and eighty-nine, and the title thereto confirmed. [32 Stat. L. 757.]

Washington to receive full sections. — "It is obvious that Congress intended that Washington should receive full sections 16 and 36, or in case of a failure by reason of prior settlement, or from natural causes, the equivalent

of such sections, and designated the secretary of the interior as the officer to approve any selections made by the territory." *Johanson v. Washington*, (1903) 190 U. S. 179, affirming (1901) 26 Wash. 668.

SEC. 4. [*Grant of school lands to Wyoming — indemnity school lands.*] That sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That section six of the act of Congress of August ninth, eighteen hundred and eighty-eight, entitled "An act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes," shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable. [26 Stat. L. 222.]

This and sections 5-14 following are from the Act of July 10, 1890, ch. 664, "An act to provide for the admission of the state of Wyoming into the Union, and for other purposes."

SEC. 5. [*Disposal of school lands.*] That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only. [26 Stat. L. 223.]

See note to section 4, *supra*.

SEC. 6. [*Lands granted for public buildings.*] That fifty sections of the unappropriated public lands within said State, to be selected and located in legal subdivisions as provided in section four of this act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State. [26 Stat. L. 223.]

See note to section 4, *supra*.

SEC. 7. [*Five per cent. net proceeds of public land sales for school fund.*] That five per centum of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the

the grant of the sixteenth and thirty-sixth sections made to said State. [21 Stat. L. 288.]

SEC. 4. [*In effect.*] This act shall take effect from and after its passage. [21 Stat. L. 288.]

An Act To make certain grants of land to the Territory of New Mexico, and for other purposes.

[*Act of June 21, 1898, ch. 489, 30 Stat. L. 484.*]

[SEC. 1.] [*Grant of school lands to New Mexico.*] That sections numbered sixteen and thirty-six in every township of the Territory of New Mexico, and where such sections, or any parts thereof, are mineral or have been sold or otherwise disposed of by or under the authority of any Act of Congress, other non-mineral lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said Territory for the support of common schools, such indemnity lands to be selected within said Territory in such manner as is hereinafter provided: *Provided*, That the sixteenth, and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this Act; but such reservations shall be subject to the indemnity provisions of this Act. [30 Stat. L. 484.]

SEC. 2. [*Lands for public buildings.*] That fifty sections of the unappropriated non-mineral lands within said Territory, to be selected and located in legal subdivisions as hereinafter provided in this Act, shall be, and are hereby, granted to said Territory for the purpose of erecting public buildings at the capital of the State of New Mexico when said Territory shall become a State and be admitted into the Union, when said capital shall be permanently located by the people of New Mexico, for legislative, executive, and judicial purposes. [30 Stat. L. 484.]

SEC. 3. [*Lands for university and agricultural college.*] That lands to the extent of two townships in quantity, authorized by the sixth section of the Act of July twenty-second, eighteen hundred and fifty-four, to be reserved for the establishment of a university in New Mexico, are hereby granted to the Territory of New Mexico for university purposes, to be held and used in accordance with the provisions in this section; and any portions of said lands that may not have been heretofore selected by said Territory may be selected now by said Territory. That in addition to the above, sixty-five thousand acres of non-mineral, unappropriated and unoccupied public land, to be selected and located as hereinafter provided, together with all saline lands in said Territory, are hereby granted to the said Territory for the use of said university, and one hundred thousand acres, to be in like manner selected, for the use of an agricultural college. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested, and the income thereof to be used exclusively for the purposes of such university and agricultural college, respectively. [30 Stat. L. 484.]

SEC. 4. [*Five per cent. of proceeds of public lands for school fund.*] That five per centum of the proceeds of the sales of public lands lying within said Territory which shall be sold by the United States subsequent to the passage of this Act, after deducting all expenses incident to the same, shall be paid to

the said Territory, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said Territory. [30 Stat. L. 485.]

SEC. 5. [*Schools, etc., under control of Territory.*] That the schools, colleges, and university provided for in this Act shall forever remain under the exclusive control of said Territory, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or of the income thereof, shall be used for the support of any sectarian or denominational school, college, or university. [30 Stat. L. 485.]

SEC. 6. [*Lands for internal improvements, and certain institutions.*] That in lieu of the grant of land for purposes of internal improvement, made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to New Mexico, and in lieu of any claim or demand of the State of New Mexico, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and twenty-nine of the Revised Statutes, making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of New Mexico, the following grants of non-mineral, and unappropriated land are hereby made to said Territory for the purposes indicated, namely:

For the establishment of permanent water reservoirs for irrigating purposes, five hundred thousand acres; for the improvement of the Rio Grande in New Mexico, and the increasing of the surface flow of the water in the bed of said river, one hundred thousand acres; for the establishment and maintenance of an asylum for the insane, fifty thousand acres; for the establishment and maintenance of a school of mines, fifty thousand acres; for the establishment and maintenance of an asylum for the deaf and dumb, fifty thousand acres; for the establishment and maintenance of a reform school, fifty thousand acres; for the establishment and maintenance of normal schools, one hundred thousand acres; for the establishment and maintenance of an institution for the blind, fifty thousand acres; for a miners' hospital for disabled miners, fifty thousand acres; for the establishment and maintenance of a military institute, fifty thousand acres; for the enlargement and maintenance of the Territorial penitentiary, fifty thousand acres. The building known as the Palace, in the city of Santa Fe, and all lands and appurtenances connected therewith and set apart and used therewith, are hereby granted to the Territory of New Mexico. [30 Stat. L. 485.]

SEC. 7. [*Grants in this act only partial.*] That this Act is intended only as a partial grant of the lands to which said Territory may be entitled upon its admission into the Union as a State, reserving the question as to the total amount of lands to be granted to said Territory until the admission of said Territory as a State shall be determined on by Congress. [30 Stat. L. 485.]

SEC. 8. [*Selection of lands.*] That all grants of land made in quantity or as indemnity by this Act shall be selected by the governor of the Territory of New Mexico, the surveyor-general of the Territory of New Mexico, and the solicitor-general of said Territory, acting as a commission, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said Territory of New Mexico. [30 Stat. L. 485.]

SEC. 9. [*Procedure on selection of lands.*] That said commission shall proceed, upon the passage of this Act, to select said lands, for each purpose as

hereinbefore designated, in legal subdivisions, of not less than one-quarter section, and shall report to the Secretary of the Interior such selections, designating in such report the purpose for which such bodies of land as selected are to be respectively used as provided above in this Act. [30 Stat. L. 486.]

SEC. 10. [*Lease or sale of lands, and disposition of proceeds — cutting of timber.*] That the lands reserved for university purposes, including all saline lands, and sections sixteen and thirty-six reserved for public schools, may be leased under such laws and regulations as may be hereafter prescribed by the legislative assembly of said Territory; but until the meeting of the next legislature of said Territory the governor, secretary of the Territory, and the solicitor-general shall constitute a board for the leasing of said lands; and all necessary expenses and costs incurred in the leasing, management, and protection of said lands and leases may be paid out of the proceeds derived from such leases. And it shall be unlawful to cut, remove, or appropriate in any way any timber growing upon the lands leased under the provisions of this Act, and not more than one section of land shall be leased to any one person, corporation, or association of persons, and no lease shall be made for a longer period than five years, and all leases shall terminate on the admission of said Territory as a State; and all money received on account of such leases in excess of actual expenses necessarily incurred in connection with the execution thereof shall be placed to the credit of separate funds for the use of said institutions, and shall be paid out only as directed by the legislative assembly of said Territory, and for the purposes indicated herein. The remainder of the lands granted by this Act, except those lands which may be leased only as above provided, may be sold under such laws and regulations as may be hereafter prescribed by the legislative assembly of said Territory; and all such necessary costs and expenses as may be incurred in the management, protection, and sale of said lands may be paid out of the proceeds derived from such sales; and not more than one-quarter section of land shall be sold to any one person, corporation, or association of persons, and no sale of said lands or any portion thereof shall be made for less than one dollar and twenty-five cents per acre; and all money received on account of such sales, after deducting the actual expenses necessarily incurred in connection with the execution thereof, shall be placed to the credit of separate funds created for the respective purposes named in this Act, and shall be used only as the legislative assembly of said Territory may direct, and only for the use of the institutions or purposes for which the respective grants of lands are made: *Provided*, That such legislative assembly may provide for leasing all or any part of the lands granted in this Act on the same terms and under the same limitations prescribed above as to the lands that may be leased only, but all leases made under the provisions of this Act shall be subject to the approval of the Secretary of the Interior, and all investments made or securities purchased with the proceeds of sales or leases of lands provided for by this Act shall be subject to like approval by the Secretary of the Interior. [30 Stat. L. 485.]

SEC. 11. [*Appropriation.*]

SEC. 12. [*Repeal.*] That all acts and parts of acts in conflict with the provisions of this Act, whether passed by the legislative assembly of said Territory or by Congress, are hereby repealed. [30 Stat. L. 486.]

SEC. 18. [*Reservation of school lands in Oklahoma.*] That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same. In all cases where sections sixteen and thirty-six, or either of them, are occupied by actual settlers prior to survey thereof, the county commissioners of the counties in which such sections are so occupied are authorized to locate other lands, to an equal amount, in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied. * * * [26 Stat. L. 89.]

This is from the Act of May 2, 1890, ch. 182, "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States

Court in the Indian Territory, and for other purposes." Other provisions of the Act relating to public lands are set forth *supra*, p. 414

SEC. 36. [*Lease of school lands in Oklahoma.*] That the school lands reserved in the Territory of Oklahoma by this and former acts of Congress, may be leased for a period not exceeding three years for the benefit of the school fund of said Territory by the governor thereof, under regulations to be prescribed by the Secretary of the Interior. [26 Stat. L. 1043.]

This and section 38 following are from the Indian Appropriation Act of March 3, 1891, ch. 543. For other provisions of the Act, see *supra*, p. 418.

SEC. 38. [*Sections reserved for schools in Oklahoma.*] No provision for settlement on or sale of the lands in the various agreements hereinbefore mentioned shall apply to sections sixteen and thirty-six thereon, which land[s] in the States are hereby granted to the State in which they are situated, for the support of the common schools of such State under the limitations prescribed by law, and such sections in the Territories of the United States are reserved from occupancy, entry, or sale, under any land law of the United States; but this provision shall not apply to mineral land which may be disposed of under the laws applicable thereto. [26 Stat. L. 1044.]

See note to section 36, *supra*.

An act to ratify the reservation of certain lands made for the benefit of Oklahoma Territory, and for other purposes.

[Act of May 4, 1894, ch. 68, 28 Stat. L. 71.]

[*Reservations in Oklahoma for school and public buildings.*] That the reservation for university, agricultural college, and normal school purposes, of section thirteen in each township, of the lands known as the Cherokee Outlet, the Tonkawa Indian Reservation, and the Pawnee Indian Reservation, in the Territory of Oklahoma, not otherwise reserved or disposed of, and the reservation for public buildings of section thirty-three in each township of said lands, not otherwise disposed of, made by the President of the United States in his proclamation of August nineteenth, eighteen hundred and ninety-three, be, and the same are hereby, ratified, and all of said lands and all of the school lands in said Territory may be leased under such laws and regulations

as may be hereafter prescribed by the legislature of said Territory; but until such legislative action the governor, secretary of the Territory, and superintendent of public instruction shall constitute a board for the leasing of said lands under the rules and regulations heretofore prescribed by the Secretary of the Interior, for the respective purposes for which the said reservations were made, except that it shall not be necessary to submit said leases to the Secretary of the Interior for his approval; and all necessary expenses and costs incurred in the leasing, management, and protection of said lands and leases may be paid out of the proceeds derived from such leases. [28 Stat. L. 71.]

Cherokee Outlet.—See Act of March 3, 1893, ch. 209, sec. 10, 27 Stat. L. 640-643.

Tonkawa Indian reservation.—See Act of March 3, 1893, ch. 209, secs. 11, 13, 27 Stat. L. 643, 644.

Pawnee Indian reservation.—See Act of

March 3, 1893, ch. 209, secs. 12, 13, 27 Stat. L. 644.

Oklahoma public lands.—See Act of May 2, 1890, ch. 182, *supra*, p. 414.

Proclamation of President referred to in text is Proc. of Aug. 19, 1893, No. 5, 28 Stat. L. 1222.

SEC. 4. [*School lands in Greer county, Oklahoma.*] Sections numbered sixteen and thirty-six are reserved for school purposes as provided in laws relating to Oklahoma, and sections thirteen and thirty-three in each township are reserved for such purpose as the legislature of the future State of Oklahoma may prescribe. That whenever any of the lands reserved for school or other purposes under this Act, or under the laws of Congress relating to Oklahoma, shall be found to have been occupied by actual settlers or for town-site purposes or homesteads prior to March sixteenth, eighteen hundred and ninety-six, an equal quantity of indemnity lands may be selected as provided by law. [29 Stat. L. 490.]

This and section 5 following are from the Act of Jan. 18, 1897, ch. 62, set forth *supra*, p. 421.

SEC. 5. [*Lands occupied for churches.*] That all lands which on March sixteenth, eighteen hundred and ninety-six, are occupied for church, cemetery, school, or other charitable or voluntary purposes, not for profit, not exceeding two acres in each case, shall be patented to the proper authorities in charge thereof, under such rules and regulations as the Secretary of the Interior shall establish, upon payment of the Government price therefor, excepting for school purposes. [29 Stat. L. 491.]

See note to section 4, *supra*.

SEC. 6. [*Grant of school lands to Utah.*] That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed State, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any Act of Congress other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national pur-

poses shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain. [28 Stat. L. 109.]

This and sections 7-13 following are from the Act of July 16, 1894, ch. 138, "An Act to enable the people of Utah to form a constitution and State government and to be admitted into the Union on an equal footing with the original States."

See R. S. secs. 1946, 2275, 2276, *supra*, pp. 460, 462 *et seq.*

Effect of statute.—This grant took effect on Jan. 4, 1896, the date of the admission of the state to the Union, and lands inclosed

within the specified sections passed to the state on that date, and the maintenance of an inclosure upon one of such sections which may theretofore have been unlawful is no longer so; no law of the United States is violated and no right or interest is affected, and consequently the right abating it, under the Act of Feb. 25, 1885, entitled "an act to prevent unlawful occupancy of public lands," is lost. U. S. v. Elliott, (1896) 74 Fed. Rep. 92.

SEC. 7. [*Lands for public buildings.*] That upon the admission of said State into the Union, in accordance with the provisions of this Act, one hundred sections of the unappropriated lands within said State to be selected and located in legal subdivisions as provided in section six of this Act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State, when permanently located, for legislative, executive, and judicial purposes. [28 Stat. L. 109.]

See note to section 6, *supra*.

SEC. 8. [*University and agricultural college lands—proceeds, how invested.*] That lands to the extent of two townships in quantity, authorized by the third section of the Act of February twenty-one, eighteen hundred and fifty-five, to be reserved for the establishment of the University of Utah, are hereby granted to the State of Utah for university purposes, to be held and used in accordance with the provisions of this section; and any portions of said lands that may not have been selected by said Territory may be selected by said State. That in addition to the above, one hundred and ten thousand acres of land, to be selected and located as provided in the foregoing section of this Act, and including all saline lands in said State, are hereby granted to said State, for the use of the said university, and two hundred thousand acres for the use of an agricultural college therein. That the proceeds of the sale of said lands, or any portion thereof, shall constitute permanent funds, to be safely invested and held by said State; and the income thereof to be used exclusively for the purposes of such university and agricultural college respectively. [28 Stat. L. 109.]

See note to section 6, *supra*.

SEC. 9. [*Five per cent. of proceeds of sales of lands for schools.*] That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 10. [*School fund.*] That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to preëmption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 11. [*State to control schools, etc.*] The schools, colleges, and university provided for in this Act shall forever remain under the exclusive control of said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or of the income thereof, shall be used for the support of any sectarian or denominational school, college, or university. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 12. [*Lands for public improvements — swamp lands.*] That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to said State, and in lieu of any claim or demand by the State of Utah under the Act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to said State of Utah, the following grants of land are hereby made to said State for the purposes indicated, namely:

For the establishment of permanent water reservoirs for irrigating purposes, five hundred thousand acres; for the establishment and maintenance of an insane asylum, one hundred thousand acres; for the establishment and maintenance of a school of mines in connection with the university, one hundred thousand acres; for the establishment and maintenance of a deaf and dumb asylum, one hundred thousand acres; for the establishment and maintenance of a reform school, one hundred thousand acres; for establishment and maintenance of State normal schools, one hundred thousand acres; for the establishment and maintenance of an institution for the blind, one hundred thousand acres; for a miners' hospital for disabled miners, fifty thousand acres. The United States penitentiary near Salt Lake City and all lands and appurtenances connected therewith and set apart and reserved therefor are hereby granted to the State of Utah.

The said State of Utah shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this Act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the State may provide. [28 Stat. L. 110.]

See note to section 6, *supra*.

SEC. 13. [*Selection of lands.*] That all land granted in quantity or as indemnity by this Act shall be selected under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of said State of Utah. [28 Stat. L. 110.]

See note to section 6, *supra*.

An Act Granting to the University of Utah a site off the public domain.

[*Act of July 23, 1894, ch. 151, 28 Stat. L. 117.*]

[*Grant of lands to Utah for university.*] That there is hereby granted to the Territory of Utah, and to any State formed from the same, the following tract of land: Commencing on the west boundary line of the Fort Douglas military reservation at a point where it is intersected by the north line of Fourth South street in Salt Lake City, Utah Territory, and running thence north on said line one hundred and thirty-six rods, more or less, to a point where the south line of First South street, in said city, according to the plat thereof, intersects the said boundary line; thence running east seventy and eighty-one one-hundred-and-thirty-sixths rods; thence south parallel with said west boundary line one hundred and thirty-six rods, more or less, to a point due east of the point of beginning; thence running west seventy and eighty-six one-hundred-and-thirty-sixths rods, to the point of beginning, containing sixty acres, for a site and campus for the University of Utah, and upon the condition that such tract shall be occupied by the said university within five years after the passage of this Act, and perpetually thereafter; and in case it is not so occupied and used it shall revert to the United States. [28 Stat. L. 117.]

Extension of time, see the following Act.

An Act Extending the time within which the University of Utah shall occupy lands heretofore granted to it.

[*Act of Jan. 8, 1897, ch. 7, 29 Stat. L. 483.*]

[*Time to occupy lands for university extended.*] That the time within which the University of Utah shall occupy the lands granted to it by Act of July twenty-third, eighteen hundred and ninety-four, is hereby extended from five years to ten years thereafter; and the said Act is so amended that instead of five years it shall read ten years. [29 Stat. L. 483.]

An Act To make the provisions of an Act of Congress approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes, seven hundred and ninety-six), applicable to the State of Utah.

[*Act of May 3, 1902, ch. 683, 32 Stat. L. 188.*]

[SEC. 1.] [*Grant of school lands to Utah.*] That all the provisions of an Act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, which provides for the selection of lands for educational purposes in lieu of those appropriated for other purposes, be, and the same are hereby, made applicable to the State of Utah, and the grant of school lands to said State, including sections two and thirty-two in each township, and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said Act, anything in the Act approved July sixteenth, eighteen hundred and ninety-four, providing for the admission of said State into the Union, to the contrary notwithstanding. [32 Stat. L. 188.]

The Act of Feb. 28, 1891, ch. 384, amends R. S. secs. 2275, 2276, and is incorporated in such sections. See *supra*, pp. 462 *et seq.*

SEC. 2. [*Sections added.*] That wherever the words "sections sixteen and thirty-six" occur in said Act, the same as applicable to the State of Utah shall read: "sections two, sixteen, thirty-two, and thirty-six," and wherever

the words "sixteenth and thirty-sixth sections" occur the same shall read: "second, sixteenth, thirty-second, and thirty-sixth sections," and whenever the words "sections sixteen or thirty-six" occur the same shall read: "sections two, sixteen, thirty-two, or thirty-six," and wherever the words "two sections" occur the same shall read "four sections." [32 Stat. L. 189.]

See note to section 1, *supra*.

An Act Relating to grants of land to the Territory and State of Washington for school purposes.

[Act of Dec. 18, 1902, ch. 5, 32 Stat. L. 756.]

[*Preamble.*] Whereas by the Act of Congress of February twenty-second, eighteen hundred and eighty-nine, providing that the inhabitants of the Territory of Washington might, upon certain conditions prescribed in said Act, become the State of Washington, certain lands were granted to the said State for school purposes; and

Whereas a doubt has arisen as to what lands were granted by section ten of said Act; and

Whereas by section twenty of the Act of Congress of March second, eighteen hundred and fifty-three, entitled "An Act to establish the Territorial government of Washington," the county commissioners of counties in said Territory were authorized to locate and select certain lands in lieu of sections sixteen and thirty-six occupied by actual settlers; and

Whereas by the Act of Congress of February twenty-sixth, eighteen hundred and fifty-nine, entitled "An Act to authorize settlers upon sixteenth and thirty-sixth sections, who settled before the surveys of public lands, to preempt their settlements," certain lands were appropriated for school purposes in lieu of such as might be patented by preemptors, and to compensate deficiencies for school purposes where said sections sixteen and thirty-six were fractional in quantity, or where one or both were wanting by reason of the township being fractional, or from any natural cause whatever, and providing for their selection; and

Whereas certain lieu lands have been selected by the Territory of Washington under said Acts of Congress: Therefore, [32 Stat. L. 756.]

[SEC. 1.] [*School lands in Washington — grant of lieu lands.*] That in all cases where sections sixteen and thirty-six, or either or any of them, or any portion thereof, have been occupied by actual settlers prior to survey thereof, and the county commissioners of the counties in which said sections so occupied as aforesaid are situated, have, under said Act of Congress of March second, eighteen hundred and fifty-three, located or selected other lands in sections or fractional sections, as the case may be, within their respective counties, in lieu of said section so occupied as aforesaid, the lands so located or selected, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State by said Act of February twenty-second, eighteen hundred and eighty-nine, and the title of said State thereto is hereby confirmed. [32 Stat. L. 757.]

SEC. 2. [*Same subject.*] That where any lands appropriated by Congress to said Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six were fractional in quantity, or where one or both were wanting by reason of the township being fractional, or from any natural cause whatever, or where section sixteen or thirty-six were patented by preemptors,

have been selected and appropriated as provided in said Act of Congress of February twenty-sixth, eighteen hundred and fifty-nine, the lands so selected and appropriated, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State of Washington by the said Act of February twenty-second, eighteen hundred and eighty-nine, and the title thereto confirmed. [32 Stat. L. 757.]

Washington to receive full sections. — "It is obvious that Congress intended that Washington should receive full sections 16 and 36, or in case of a failure by reason of prior settlement, or from natural causes, the equivalent of such sections, and designated the

secretary of the interior as the officer to approve any selections made by the territory." *Johanson v. Washington*, (1903) 190 U. S. 179, affirming (1901) 26 Wash. 668.

SEC. 4. [*Grant of school lands to Wyoming — indemnity school lands.*] That sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That section six of the act of Congress of August ninth, eighteen hundred and eighty-eight, entitled "An act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes," shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable. [26 Stat. L. 222.]

This and sections 5-14 following are from the Act of July 10, 1890, ch. 664, "An act to provide for the admission of the state of Wyoming into the Union, and for other purposes."

SEC. 5. [*Disposal of school lands.*] That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only. [26 Stat. L. 223.]

See note to section 4, *supra*.

SEC. 6. [*Lands granted for public buildings.*] That fifty sections of the unappropriated public lands within said State, to be selected and located in legal subdivisions as provided in section four of this act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State. [26 Stat. L. 223.]

See note to section 4, *supra*.

SEC. 7. [*Five per cent. net proceeds of public land sales for school fund.*] That five per centum of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the

same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State. [26 Stat. L. 223.]

See note to section 4, *supra*.

SEC. 8. [*University lands—sales—proceeds, how applied—fish hatchery land granted.*] That the lands granted to the Territory of Wyoming by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the State of Wyoming, to the extent of the full quantity of seventy-two sections to said State, and any portion of said lands that may not have been selected by said Territory of Wyoming may be selected by the said State; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said State and the income thereof be used exclusively for university purposes. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of May twenty-eighth, eighteen hundred and eighty-eight, to the Territory of Wyoming for a fish hatchery and other public purposes shall, upon the admission of said State of Wyoming into the Union, become the property of said State. [26 Stat. L. 223.]

See note to section 4, *supra*.

SEC. 9. [*Grant of penitentiary and personal property.*] [*Executed.*]

SEC. 10. [*Lands for agricultural college.*] That ninety thousand acres of land, to be selected and located as provided in section four of this act, are hereby granted to said State for the use and support of an agricultural college in said State as provided in the acts of Congress making donations of lands for such purpose. [26 Stat. L. 224.]

See note to section 4, *supra*.

SEC. 11. [*Lands in lieu of internal improvement, swamp, and saline lands.*] That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to the State of Wyoming, and in lieu of any claim or demand by the said State under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the State of Wyoming, and in lieu of any grant of saline lands to said State, the following grants of land are hereby made, to wit:

To the State of Wyoming: For the establishment and maintenance and support in the said State of the insane asylum in Uinta County, thirty thousand acres; for the penal, reform, or educational institution in course of construction in Carbon County, thirty thousand acres; for the penitentiary in Albany County, thirty thousand acres; for the fish-hatchery in Albany County, five thousand acres; for the deaf, dumb, and blind asylum in Laramie County, thirty thousand acres; for the poor farm in Fremont County, ten thousand acres; for a hospital

for miners who shall become disabled or incapacitated to labor while working in the mines of the State, thirty thousand acres; for public buildings at the capital of the State, in addition to those hereinbefore granted for that purpose, seventy-five thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred and sixty thousand acres. Making a total of five hundred thousand acres: *Provided*, That none of the lands granted by this act shall be sold for less than ten dollars per acre. [26 Stat. L. 224.]

See note to section 4, *supra*.

SEC. 12. [*Grants limited to specific uses.*] That the State of Wyoming shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the State may provide. [26 Stat. L. 224.]

See note to section 4, *supra*.

SEC. 13. [*Mineral lands excepted from grants — lieu lands.*] That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township, shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof, for the use and benefit of the common schools of said State. [26 Stat. L. 224.]

See note to section 4, *supra*.

SEC. 14. [*Selections, how made — deductions.*] That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved and unappropriated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects. [26 Stat. L. 224.]

See note to section 4, *supra*.

[LEASE OF SCHOOL LANDS IN WYOMING.]

An act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes.

[Act of Aug. 9, 1888, ch. 819, 25 Stat. L. 393.]

[SEC. 1.] [*Lease of school lands in Wyoming.*] That the county commissioners of each of the counties organized or hereafter organized in the Territory of Wyoming are hereby authorized to lease the lands devoid of timber and known mineral deposits heretofore reserved or that may hereafter be reserved for school purposes in their respective counties, in such manner as may be provided by the laws of the said Territory. [25 Stat. L. 393.]

SEC. 2. [*Use of funds.*] That all moneys derived from the leasing of the lands as provided by the first section of this act shall become part of the school funds of the county where such lands are situated, and shall be used for the building of school-houses and the support of public schools in such county, and for no other purpose. [25 Stat. L. 393.]

SEC. 3. [*Lease of university lands—regulations.*] That the governor, superintendent of public instruction, and auditor of the Territory of Wyoming are hereby constituted a board, with authority to lease the lands heretofore selected, or that may be hereafter selected, for university purposes, under the provisions of the act of Congress entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," approved February eighteenth, eighteen hundred and eighty-one, in the said Territory of Wyoming, in such manner as may be provided by the laws of the Territory of Wyoming: *Provided*, That until the legislature of said Territory shall provide by law for the leasing of said university and school lands the said governor, superintendent of public instruction, and auditor are authorized, with the approval of the Secretary of the Interior, to make the necessary rules and regulations to carry out the provisions of this section. [25 Stat. L. 393.]

SEC. 4. [*Use of funds.*] That all moneys derived from the leasing of the said university lands, as provided by the third section of this act, shall become a part of the university fund of said Territory, and shall be used for the support of the university of Wyoming, and for no other purpose. [25 Stat. L. 393.]

SEC. 5. [*Terms of leases and annulment.*] That no lease under the provisions of this act shall be made for a term exceeding five years, and all leases shall expire within six months after the Territory is admitted as a State into the Union: *Provided*, That the Secretary of the Interior may at any time in his discretion annul any lease made under the provisions of this act. [25 Stat. L. 393.]

SEC. 6. [*Lands to be selected in lieu of school lands found to be mineral lands.*] That where lands in the sixteenth and thirty-sixth sections, in the Territory of Wyoming, are found upon survey to be in the occupancy, and covered by the improvements of an actual pre-emption or homestead settler, or where either of them are fractional in quantity, in whole or in part, or wanting because the townships are fractional or have been or shall hereafter be reserved for public purposes, or found to be mineral in character, other lands may be selected by an agent appointed by the governor of the Territory in lieu thereof, from the surveyed public lands within the Territory not otherwise legally claimed or appropriated at the time of selection, in accordance with the principles of adjustment prescribed by section twenty-two hundred and seventy-six of the Revised Statutes of the United States, and upon a determination by the Interior Department that a portion of the smallest legal subdivision in a section numbered sixteen, or thirty-six, in Wyoming, is mineral land, such smallest legal subdivision shall be excepted from the reservation for schools, and indemnity allowed for it in its entirety, and such subdivisions or the portions of them remaining after segregation of the mineral lands or claims, shall be treated as other public lands of the United States. [25 Stat. L. 393.]

[XVII. TIMBER CULTURE.]

SECS. 2317, 2464-2468. [*Repealed.*]

These sections were as follows:
"SEC. 2317. Every person having a homestead on the public domain, under the pro-

visions of this chapter, who, at the end of the third year of his residence thereon, shall have had under cultivation, for two years,

one acre of timber, the trees thereon not being more than twelve feet apart each way, and in a good, thrifty condition, for each and every sixteen acres of such homestead, shall, upon due proof of the fact by two credible witnesses, receive his patent for such homestead."

This section was construed, cited, or referred to in *U. S. v. Stores*, (1882) 14 Fed. Rep. 824; *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, (1900) 104 Fed. Rep. 46, *affirmed* (C. C. A. 1901) 112 Fed. Rep. 4; *Southworth v. U. S.*, (1895) 30 Ct. Cl. 78; *Ewing v. Rourke*, (1887) 14 Oregon 514.

"Sec. 2464. Every person who plants, protects, and keeps in a healthy growing condition for ten years forty acres of timber, the trees thereon not being more than twelve feet apart each way on any quarter-section of any of the public lands, shall be entitled to a patent for the whole of such quarter-section at the expiration of the ten years, on making proof of such fact by not less than two credible witnesses: *Provided*, That only one quarter in any section shall be thus granted."

This section was construed, cited, or referred to in *U. S. v. Stores*, (1882) 14 Fed. Rep. 824; *Hartman v. Warren*, (C. C. A. 1896) 76 Fed. Rep. 157; *Healey v. U. S.*, (1894) 29 Ct. Cl. 115, *reversed* (1895) 160 U. S. 136.

"Sec. 2465. Every person applying for the benefit of the preceding section shall, upon application to the register of the land-office in which he is about to make such entry, make affidavit before the register or receiver that such entry is made for the cultivation of timber, and upon filing his affidavit with the register and receiver, and on payment of ten dollars, he shall thereupon be permitted to enter the quantity of land specified."

This section was construed, cited, or referred to in *U. S. v. Stores*, (1882) 14 Fed. Rep. 824; *Healey v. U. S.*, (1894) 29 Ct. Cl. 115, *reversed* (1895) 160 U. S. 136; *Thompson v. Hanson*, (1881) 28 Minn. 484.

"Sec. 2466. No certificate shall be given or patent issue therefor until the expiration of at least ten years from the date of such entry; and if at the expiration of such time, or at any time within three years thereafter, the person making such entry, or, if he be dead, his heirs or legal representatives, shall prove by two credible witnesses that he has planted and for not less than ten years has cultivated and protected such quantity and character of timber, he shall receive the patent for such quarter-section of land."

This section was construed, cited, or referred to in *U. S. v. Stores*, (1882) 14 Fed. Rep. 824; *Healey v. U. S.*, (1894) 29 Ct. Cl. 115, *reversed* (1895) 160 U. S. 136.

"Sec. 2467. If at any time after the filing of such affidavit, and prior to the issuing of the patent for the land, it is proved, after due notice to the party making such entry and claiming to cultivate such timber, to the satisfaction of the register of the land-office, that such person has abandoned or failed to cultivate, protect, and keep in good condition such timber, then, and in that event, the land shall revert to the United States."

"Sec. 2468. No land acquired under the

provisions of the four preceding sections shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of a patent therefor."

See *Gould v. Tucker*, (S. Dak. 1904) 100 N. W. Rep. 427.

These sections were incorporated into the Revised Statutes from the Timber-culture Act of March 3, 1873, ch. 277, 17 Stat. L. 605. They were amended by the amendment of such Act by the Acts of March 13, 1874, ch. 55, 18 Stat. L. 21; May 20, 1876, ch. 102, 19 Stat. L. 54; June 19, 1876, ch. 134, 19 Stat. L. 59; June 14, 1878, ch. 190, 20 Stat. L. 113, the latter Act superseding all prior Acts and giving all provisions on the subject. This latter Act was as follows:

"An act to amend an act entitled 'An act to encourage the growth of timber on the Western Prairies.'

"[Sec. 1.] That the act entitled 'An act to amend the act entitled "An act to encourage the growth of timber on Western Prairies"', approved March thirteenth, eighteen hundred and seventy-four, be and the same is hereby amended so as to read as follows: That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, who shall plant, protect, and keep in a healthy, growing condition for eight years ten acres of timber, on any quarter-section of any of the public lands of the United States, or five acres on any legal subdivision of eighty acres, or two and one half acres on any legal subdivision of forty acres or less, shall be entitled to a patent for the whole of said quarter-section, or of such legal subdivision of eighty or forty acres, or fractional subdivision of less than forty acres, as the case may be, at the expiration of said eight years, on making proof of such fact by not less than two credible witnesses, and a full compliance of the further conditions as provided in section two: *Provided further*, That not more than one quarter of any section shall be thus granted, and that no person shall make more than one entry under the provisions of this act." [20 Stat. L. 113.]

This Act was construed, cited, or referred to in *Bucklin v. U. S.*, (1895) 159 U. S. 682; *Adams v. Church*, (1904) 193 U. S. 510; *U. S. v. Shinn*, (1882) 14 Fed. Rep. 447; *U. S. v. Madison*, (1884) 21 Fed. Rep. 628; *U. S. v. Thompson*, (1886) 29 Fed. Rep. 86; (1887) 31 Fed. Rep. 331; *U. S. v. Howard*, (1904) 132 Fed. Rep. 325; *Cooper v. Wilder*, (Cal. 1895) 41 Pac. Rep. 26; *Palmer v. March*, (1885) 34 Minn. 127; *Church v. Adams*, (1900) 37 Oregon 355; *Adams v. Church*, (1902) 42 Oregon 272; *Kelsay v. Eaton*, (Oregon 1904) 76 Pac. Rep. 770; *Danforth v. McCook County*, (1898) 11 S. Dak. 258.

"Sec. 2. That the person applying for the benefits of this act shall, upon application to the register of the land-district in which he or she is about to make such entry, make affidavit, before the register or the receiver, or the clerk of some court of record, or officer

authorized to administer oaths in the district where the land is situated; which affidavit shall be as follows, to wit: I, ———, having filed my application, number —, for an entry under the provisions of an act entitled 'An act to amend an act entitled "An act to encourage the growth of timber on the Western prairies"' approved ——— 187—, do solemnly swear (or affirm) that I am the head of a family (or over twenty-one years of age), and a citizen of the United States (or have declared my intention to become such); that the section of land specified in my said application is composed exclusively of prairie lands, or other lands devoid of timber; that this filing and entry is made for the cultivation of timber, and for my own exclusive use and benefit; that I have made the said application in good faith, and not for the purpose of speculation, or directly or indirectly for the use or benefit of any other person or persons whomsoever; that I intend to hold and cultivate the land, and to fully comply with the provisions of this said act; and that I have not heretofore made an entry under this act, or the acts of which this is amendatory. And upon filing said affidavit with said register and said receiver and on payment of ten dollars, if the tract applied for is more than eighty acres; and five dollars if it is eighty acres or less, he or she shall thereupon be permitted to enter the quantity of land specified; and the party making an entry of a quarter-section under the provisions of this act shall be required to break or plow five acres covered thereby the first year, five acres the second year, and to cultivate to crop or otherwise the five acres broken or plowed the first year; the third year he or she shall cultivate to crop or otherwise the five acres broken the second year, and to plant in timber, seeds, or cuttings the five acres first broken or plowed, and to cultivate and put in crop or otherwise the remaining five acres, and the fourth year to plant in timber, seeds, or cuttings the remaining five acres. All entries of less quantity than one quarter-section shall be plowed, planted, cultivated and planted to trees, tree-seeds, or cuttings, in the same manner and in the same proportion as hereinbefore provided for a quarter section. *Provided, however,* That in case such trees, seeds, or cuttings shall be destroyed by grasshoppers, or by extreme and unusual drouth, for any year or term of years, the time for planting such trees, seeds, or cuttings shall be extended one year for every such year that they are so destroyed: *Provided further,* That the person making such entry shall, before he or she shall be entitled to such extension of time, file with the register and the receiver of the proper land-office an affidavit, corroborated by two witnesses, setting forth the destruction of such trees, and that, in consequence of such destruction, he or she is compelled to ask an extension of time, in accordance with the provisions of this act: *And provided further,* That no final certificate shall be given, or patent issued, for the land so entered until the expiration of eight years from the date of such entry; and if, at the expiration of

such time, or at any time within five years thereafter, the person making such entry, or, if he or she be dead, his or her heirs or legal representatives, shall prove by two credible witnesses that he or she or they have planted, and, for not less than eight years, have cultivated and protected such quantity and character of trees as aforesaid; that not less than twenty-seven hundred trees were planted on each acre and that at the time of making such proof that there shall be then growing at least six hundred and seventy-five living and thrifty trees to each acre, they shall receive a patent for such tract of land." [20 Stat. L. 113.]

"SEC. 3. That if at any time after the filing of said affidavit, and prior to the issuing of the patent for said land, the claimant shall fail to comply with any of the requirements of this act, then and in that event such land shall be subject to entry under the homestead laws, or by some other person under the provisions of this act. *Provided,* That the party making claim to said land, either as a homestead-settler, or under this act, shall give at the time of filing his application, such notice to the original claimant as shall be prescribed by the rules established by the Commissioner of the General Land Office; and the rights of the parties shall be determined as in other contested cases." [20 Stat. L. 114.]

"SEC. 4. That no land acquired under the provisions of this act shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor." [20 Stat. L. 114.]

"SEC. 5. That the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land-offices shall each be entitled to receive two dollars at the time of entry, and the like sum when the claim is finally established and the final certificate issued." [20 Stat. L. 114.]

"SEC. 6. That the fifth section of the act entitled 'An act in addition to an act to punish crimes against the United States, and for other purposes', approved March third, eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits required or authorized by this act." [20 Stat. L. 114.]

"SEC. 7. That parties who have already made entries under the acts approved March third, eighteen hundred and seventy-three, and March thirteenth, eighteen hundred and seventy-four, of which this is amendatory shall be permitted to complete the same upon full compliance with the provisions of this act; that is, they shall, at the time of making their final proof, have had under cultivation, as required by this act, an amount of timber sufficient to make the number of acres required by this act." [20 Stat. L. 115.]

"SEC. 8. All acts and parts of acts in conflict with this act are hereby repealed." [20 Stat. L. 115.]

Repeal.—This latter Act was repealed by the provisions of the following text.

An act to repeal timber-culture laws, and for other purposes.

[Act of March 3, 1891, ch. 561, 26 Stat. L. 1095.]

[SEC. 1.] [*Timber-culture laws repealed.*] That an act entitled "An act to amend an act entitled 'An act to encourage the growth of timber on the Western prairies, ['']" approved June fourteenth, eighteen hundred and seventy-eight, and all laws supplementary thereto or amendatory thereof, be, and the same are hereby, repealed: *Provided*, That this repeal shall not affect any valid rights heretofore accrued or accruing under said laws, but all bona fide claims lawfully initiated before the passage of this act may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed: *And provided further*, That the following words of the last clause of section two of said act, namely, "That not less than twenty-seven hundred trees were planted on each acre," are hereby repealed: *And provided further*, That in computing the period of cultivation the time shall run from the date of the entry, if the necessary acts of cultivation were performed within the proper time: *And provided further*, That the preparation of the land and the planting of trees shall be construed as acts of cultivation, and the time authorized to be so employed and actually employed shall be computed as a part of the eight years of cultivation required by statute: *And provided further*, That if trees, seeds, or cuttings were in good faith planted as provided by law and the same and the land upon which so planted were thereafter in good faith cultivated as provided by law for at least eight years by a person qualified to make entry and who has a subsisting entry under the timber culture laws, final proof may be made without regard to the number of trees that may have been then growing on the land. *Provided*, That any person who has made entry of any public lands of the United States under the timber-culture laws, and who has for a period of four years in good faith complied with the provisions of said laws and who is an actual bona fide resident of the State or Territory in which said land is located shall be entitled to make final proof thereto, and acquire title to the same, by the payment of one dollar and twenty five cents per acre for such tract, under such rules and regulations as shall be prescribed by the Secretary of the Interior, and registers and receivers shall be allowed the same fees and compensation for final proofs in timber-culture entries as is now allowed by law in homestead entries: *And provided further*, That no land acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor. [26 Stat. L. 1095.]

This section was amended by Act of March 3, 1893, ch. 208, 27 Stat. L. 593, by adding thereto, after the fourth proviso, the provisos given above as following it.

Previously acquired valid rights not affected by repeal of timber-culture laws. *Bucklin v. U. S.*, (1895) 159 U. S. 682.

Exemption of land from entryman's debts.—The provision that no land acquired under the timber-culture laws shall in any event "become liable to the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor" is substantially a re-enactment of R. S. 2468, and there seems to be no valid reason why such exemption should not be enforced in the state as well as in the federal courts. *Gould v. Tucker*, (S. Dak. 1904) 100 N. W. Rep. 427.

Taxes are not debts within the meaning of

the exemption clause of this Act. *Danforth v. McCook County*, (1898) 11 S. Dak. 258.

SEC. 2. [*Amends Act of March 3, 1877, ch. 107.* See *supra*, p. 395.]

SEC. 3. [*Amends R. S. sec. 2288.* See *infra*, p. 516.]

SEC. 4. [*Repeals pre-emption laws.* See *supra*, p. 285.]

SEC. 5. [*Amends R. S. secs. 2289, 2290.* See *supra*, p. 285 *et seq.*]

SEC. 6. [*Amends R. S. sec. 2301.* See *supra*, p. 317.]

SEC. 7. [*Suspension of entries for correction of errors.* See *infra*, p. 525.]

SEC. 8. [*Suits to annul patents—timber depredations.* See *infra*, p. 526: **TIMBER LANDS AND FOREST RESERVES.**]

SEC. 9. [*Sale of public lands.* See *supra*, p. 331.]

SEC. 10. [*Indian agreements not changed.*] That nothing in this act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands, or of land ceded to the United States to be disposed of for the benefit of such tribes, and the proceeds thereof to be placed in the Treasury of the United States; and the disposition of such lands shall continue in accordance with the provisions of such treaties or agreements; except as provided in section 5 of this act. [26 Stat. L. 1099.]

SECS. 11-14. [*Town sites in Alaska.* See ALASKA, vol. 1, p. 53.]

SEC. 15. [*Reservation of Indian lands in Alaska.* See ALASKA, vol. 1, p. 54.]

SEC. 16. [*Town-site entries on mineral lands.* See *supra*, p. 352.]

SEC. 17. [*Limit on reservoir sites.* See *infra*, WATERS.]

SECS. 18-21. [*Right of way to ditch companies.* See *infra*, p. 508.]

SEC. 22. [*Disposal of lands of Dakota Central R. R. Co.*] [*Special.*]

SEC. 23. [*Entries on Osage lands confirmed.*] [*Special.*]

SEC. 24. [*Forest reservations.* See TIMBER LANDS AND FOREST RESERVES.]

An Act Relating to final proof in timber-culture entries.

[*Act of March 4, 1896, ch. 40, 29 Stat. L. 43.*]

[*Final proof, where taken.*] That timber-culture claimants shall not be required, in making final proof, to appear at the land office to which proof is to be presented or before an officer designated by the Act of May twenty-sixth, eighteen hundred and ninety, within the county in which the land is situated; but such claimant may have his or her personal evidence taken by a United States court commissioner or a clerk of any court of record under such rules and regulations as the Secretary of the Interior may prescribe. [29 Stat. L. 43.]

[XVIII. RIGHT OF WAY OVER PUBLIC LANDS.]

Sec. 2477. [*Right of way for highways over public lands.*] The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. [R. S.]

Act of July 26, 1866, ch. 262, 14 Stat. L. 253.

Transfer of right of way by settler. See R. S. sec. 2288, *infra*, p. 516.

"The object of the grant [made by this section] was to enable the citizens and residents of the states and territories where public lands belonging to the United States were situated to build and construct such highways across the public domain as the exigencies of their localities might require, without making themselves liable as trespassers." *Wells v. Pennington County*, (1891) 2 S. Dak. 1.

A railroad is a highway within the meaning of this section. *Tennessee, etc., R. Co. v. Taylor*, (1893) 102 Ala. 224; *Flint, etc., R. Co. v. Gordon*, (1879) 41 Mich. 420. See also *Verdier v. Port Royal R. Co.*, (1881) 15 S. Car. 476; *Sams v. Port Royal, etc., R. Co.*, (1881) 15 S. Car. 484. *Contra*, *Burlington, etc., R. Co. v. Johnson*, (1887) 38 Kan. 142.

Is grant in *præsentis*?—It has been held that this section operates as a present grant and that when the offer which it makes is

acted on and accepted, the acceptance relates back and becomes effective from the date of the Act. *Walcott Tp. v. Skauge*, (1897) 6 N. Dak. 382; *Wells v. Pennington County*, (1891) 2 S. Dak. 1. See also *Tholl v. Koles*, (1902) 65 Kan. 802.

It is believed, however, that the statement thus broadly made is inaccurate unless it is accepted as subject to the qualification that the creation of a highway by prescription or by state legislation accepting the offer made by the federal statute relates back to the date of the Act only when no adverse rights to the land in question have intervened. The theory upon which these cases were decided is that the words "is hereby granted" import a grant in *præsentis* which is analogous to that made by the act granting swamp and overflowed lands to the states. (See *supra*, this title, XII. *Swamp and Overflowed Lands*.) In the case of that grant, however, the swamp and overflowed lands were susceptible of exact identification, while the application to this section of the principles invoked in the

construction of that Act, would operate to create endless confusion, as every sale of public lands made after July 26, 1866, would be subject to the right of third persons to create highways over the lands sold. The true rule would seem to be that laid down in *Wallowa County v. Wade*, (1903) 43 Oregon 253, wherein it was said: "The Act of Congress is more than a mere general offer to the public, being in effect a dedication of the land, which becomes operative and relates back to the date of the Act whenever the public, either by user or by some appropriate act of the highway authorities, affirmatively manifests an intention to use a certain definite portion of the public land as a highway. The right is necessarily indefinite, and, in a sense, floating and liable to be extinguished by a sale or disposition of the land, until the highway is surveyed and marked on the ground, or in some other way identified or designated; but when the public authorities lay out and locate a road over public land of the United States by surveying and marking it on the ground, or by some legislative act, or when it is shown by user, the right becomes complete, and an intention to accept the dedication is manifested, and subsequent settlers on the land take subject to the easement." See also *Red River, etc., R. Co. v. Sture*, (1884) 32 Minn. 95.

As a matter of fact it would seem that in some of the cases cited above it was unnecessary for the court to hold that this section operated as a grant *in presenti*. Thus in *Tholl v. Koles*, (1902) 65 Kan. 802, while the court held that the Act was a grant *in presenti*, the point actually decided seems to be that the proper acceptance of the grant by the state established a highway. And in *Wells v. Pennington County*, (1891) 2 S. Dak. 1, a pre-emption settlement was made on the land after the passage of the territorial statute accepting the offer, but before the lands were surveyed and the highways identified, and while there was a distinct assertion that the grant was *in presenti*, the precise point decided seems to be that when the lands were surveyed and the highways designated, the right of the territory attached to the highways and took effect as of the date of the territorial statute of acceptance.

State's acceptance of grant establishes highway.—This statute is a standing offer of a free right of way over the public domain, and as soon as the offer is accepted in an appropriate manner by the agents of the public or by the public itself, a highway is established. Thus, evidence of user, general and long continued, and proof that the county authorities has assumed control over the road and had worked and improved a portion of it, has been held competent evidence as tending to show an acceptance of the offer of the statute. *Streeter v. Stalnaker*, (1901) 61 Neb. 205; *Rolling v. Emrich*, (Wis. 1904) 99 N. W. Rep. 464.

An Act of the state legislature declaring that all roads within a certain county which had been used as highways for two years or more before the passage of the act, should be considered highways, operated as an ac-

ceptance of the grant of this section and established the status of such highways over the public land, so that when it passed into private ownership it was taken subject to the easement of the highways. *Schwerdtle v. Placer County*, (1895) 108 Cal. 589.

And the same effect has been held to result from the passage of a state statute declaring the section lines in a county containing public lands to be highways. *Tholl v. Koles*, (1902) 65 Kan. 802; *Wells v. Pennington County*, (1891) 2 S. Dak. 1; *Keen v. Fairview Tp.*, (1896) 8 S. Dak. 558.

But in one case, the court, while taking judicial notice of the United States and state statutes, held that it was necessary to prove that the particular land in controversy was a part of the public domain until the passage of the state statute, as it could not take judicial notice of such fact. *Schwerdtle v. Placer County*, (1895) 108 Cal. 589.

Lands subject to right of way grant.—Lands acquired by the United States under the provisions of the Direct Tax Act of 1863, 12 Stat. L. 422, are public lands within the meaning of this section, and unless they are reserved for public uses, a railroad may acquire a right of way over them. *Verdier v. Port Royal R. Co.*, (1881) 15 S. Car. 476; *Sams v. Port Royal, etc., R. Co.*, (1881) 15 S. Car. 484.

The mere announcement of a governmental policy to withhold, when the same shall be surveyed, specified portions of the public domain from settlers and purchasers "for the purpose of being applied to schools of states hereafter to be erected" is neither a grant nor a reservation for public uses within the meaning of this section. *Riverside Tp. v. Newton*, (1898) 11 S. Dak. 120.

Rights of railroad as against homestead entryman.—Where a railroad acquired a right of way under this section over land which had been entered as a homestead, but not patented to the entryman, it was held that the patent, when subsequently issued, would not relate back so as to defeat the railroad's right to the right of way, as the homestead entryman made his entry subject to the possibility that it would be defeated by the subsequent construction of any railway before he earned his patent. It was also held, however, that the railroad should compensate the entryman for improvements made by him prior to the appropriation of the right of way. *Flint, etc., R. Co. v. Gordon*, (1879) 41 Mich. 420.

It has been held, on the other hand, that a settler who has entered public land under the homestead law, though no patent has been issued, has an inchoate title to the land, which is property; that this is a vested right, which can only be defeated by the settler's failure to comply with the conditions of the law: that if he complies with these conditions, he becomes invested with full ownership and the absolute right to a patent; that the patent, when issued, relates back to the date of his settlement; and that as against such a homesteader a railroad company has not, under the Act of March 3, 1875, or under this section, a right of way over the

land homesteaded unless such right was acquired before the homesteader's settlement. *Red River, etc., R. Co. v. Sture*, (1884) 32 Minn. 95.

It would seem that this is clearly the better view. See *supra*, this title, VI. *Homesteads*, notes to R. S. 2289 *et seq.* And see *infra*, p. 501 *et seq.*, notes to Act of March 3, 1875, ch. 152, 18 Stat. L. 482, 483.

Grant not revocable.—The right granted by this section is not in the nature of a mere license revocable at the pleasure of the grantor. When highways are once established over the public domain, under and by virtue of this section, the public at once becomes vested with an absolute right to the use thereof which cannot be revoked by the United States. *Walcott Tp. v. Skauge*, (1897) 6 N. Dak. 382.

Establishment of highway by prescription.—This Act is an unequivocal grant of the right of way for highways over public lands, without any limitation as to the manner of their establishment, and therefore authorizes the establishment of highways over public lands by prescription whenever prescription is recognized as a mode for the establishment of highways in the state wherein the public lands are situated. *Smith v. Mitchell*, (1899) 21 Wash. 536. See also *Wallowa County v. Wade*, (1903) 43 Oregon 253.

Insufficient acceptance of grant.—A few months desultory use by a few persons of a logging road or trail through the woods, with no action by the public authorities of any kind, is insufficient to constitute an acceptance of the offer made by this section. *Rolling v. Emrich*, (Wis. 1904) 99 N. W. Rep. 464.

Grant severs land from public domain.—After an entry and appropriation under the provisions of this section and the proper designation of the right of way granted thereby, the way so appropriated ceases to be a portion of the public domain. *Estes Park Toll Road Co. v. Edwards*, (1893) 3 Colo. App. 74.

Subsequent purchaser takes subject to existing easement.—Where a right of way has been lawfully acquired over public land under

the provisions of this section, a subsequent purchaser or grantee of such land takes it subject to the easement in favor of the public, unless such easement has been extinguished by the operation of the state laws.

California.—*McRose v. Bottyer*, (1889) 81 Cal. 122.

Colorado.—*Estes Park Toll Road Co. v. Edwards*, (1893) 3 Colo. App. 74.

Kansas.—*Tholl v. Koles*, (1902) 65 Kan. 802.

North Dakota.—*Walcott Tp. v. Skauge*, (1897) 6 N. Dak. 382.

Oregon.—*Wallowa County v. Wade*, (1903) 43 Oregon 253.

South Dakota.—*Keen v. Fairview Tp.*, (1896) 8 S. Dak. 558.

Patent unnecessary.—In order for a railroad to acquire the benefit tendered by this section, nothing more is necessary than the construction of its road. No patent is required. The offer and acceptance, taken together, are equivalent to a grant. *Estes Park Toll Road Co. v. Edwards*, (1893) 3 Colo. App. 74; *Flint, etc., R. Co. v. Gordon*, (1879) 41 Mich. 420.

Taxation of right of way.—When a part of the public domain is severed therefrom by virtue of an appropriation as a right of way by a toll-road company under the provisions of this section, it is subject to taxation by the county in which it is situated. *Estes Park Toll Road Co. v. Edwards*, (1893) 3 Colo. App. 74.

Consent of United States to dedication.—It has been held that one who entered on an Indian reservation and attempted to locate a mining claim to which he was given a patent after the treaty opening the reservation, had, prior to such treaty, sufficient right in such mining claim to dedicate a portion thereof as a highway. This section operates to give the consent of the United States to such dedication, and the public acquires a valid title, of which it cannot be deprived by subsequent acts of the patentee or his grantees. *Deadwood v. Whittaker*, (1900) 12 S. Dak. 515.

SEC. 23. [*Reservation of land for public highways in Oklahoma.*] That there shall be reserved public highways four rods wide between each section of land in said Territory, the section lines being the center of said highways; but no deduction shall be made, where cash payments are provided for, in the amount to be paid for each quarter section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority, the title to the respective strips shall inure to the then owner of the tract of which it formed a part by the original survey. [26 Stat. L. 92.]

This is from the Act of May 2, 1890, ch. 182. "An Act to provide a temporary government for the Territory of Oklahoma, to

enlarge the jurisdiction of the United States Court in the Indian Territory, and for other purposes."

SEC. 6. [*Roads, bridges, and ferries on military reservations—driving stock across.*] The Secretary of War shall have authority, in his discretion,

to permit the extension of State, county, and Territorial roads across military reservations; to permit the landing of ferries, the erection of bridges thereon; and permit cattle, sheep or other stock animals to be driven across such reservation, whenever in his judgment the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon. [23 Stat. L. 104.]

This is from the Act of July 5, 1884, ch. 214, set forth *supra*, p. 423.

An act granting to railroads the right of way through the public lands of the United States.

[Act of March 3, 1875, ch. 152, 18 Stat. L. 482.]

[SEC. 1.] [*Right of way through public lands, materials, station-grounds, etc., granted to railroads.*] That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station-buildings, depots, machine shops, side-tracks, turn-outs, and water-stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road. [18 Stat. L. 482.]

In Indian Territory. — See INDIANS, vol. 3, p. 511.

Amendment of this Act. — See Act of Feb. 27, 1901, ch. 614, *infra*, p. 507.

"The general nature and purpose of the Act of [March 3] 1875 were manifestly to promote the building of railroads through the immense public domain remaining unsettled and undeveloped at the time of its passage. It was not a mere bounty for the benefit of the railroads that might accept its provisions, but was legislation intended to promote the interests of the government in opening to settlement and in enhancing the value of those public lands through or near which such railroads might be constructed." U. S. v. Denver, etc., R. Co., (1893) 150 U. S. 1, *affirmed* (1888) 34 Fed. Rep. 838.

Grant is for public, not private, benefit. — The grant made by this Act is intended for railroad companies intending to operate as common carriers for the benefit and convenience of the public, and not for the benefit of the companies solely. Hence, a logging railroad company which has no other intention than that of operating its railroad for the purposes of its own private business, is not entitled to the grant made by the Act. (1890) 19 Op. Atty.-Gen. 546.

Grant in futuro, not in present. — Since an existing grantee is essential to the creation of a present grant, this Act does not operate as an absolute grant in *presenti*, but instead is simply an offer to all railroad companies, and takes effect as a grant to any particular company only when such company complies with the provisions of the Act by locating its road and filing a profile

thereof in the land office. Spokane Falls, etc., R. Co. v. Ziegler, (C. C. A. 1894) 61 Fed. Rep. 392, 15 U. S. App. 472, *affirmed* (1897) 167 U. S. 65; Denver, etc., R. Co. v. Wilson, (1900) 28 Colo. 6; Chicago, etc., R. Co. v. Van Cleave, (1894) 52 Kan. 665; Red River, etc., R. Co. v. Sture, (1884) 32 Minn. 95. See also Radke v. Winona, etc., R. Co., (1888) 39 Minn. 262.

This rule, however, is subject to the qualification that the grant becomes fixed definitely by the actual construction of the railroad before the filing of the profile thereof. In other words, the statute enables a railroad company to secure the grant by an actual construction of its road, or in advance of construction, by filing a profile as provided in section 4. Jamestown, etc., R. Co. v. Jones, (1900) 177 U. S. 125, *reversing* (1898) 7 N. Dak. 619; Denver, etc., R. Co. v. Hanoum, (1893) 19 Colo. 162; Pennsylvania Min., etc., Co. v. Everett, etc., R. Co., (1902) 29 Wash. 102. See also Washington, etc., R. Co. v. Cœur d'Alene R., etc., Co., (1892) 52 Fed. Rep. 765; Rio Grande Western R. Co. v. Telluride Power, etc., Co., (1897) 16 Utah 125, *writ of error dismissed* (1900) 175 U. S. 639.

Railroad securing right for benefit of another company. — Where the right of a railroad company to claim the benefits of this Act was attacked on the ground that it was not organized in good faith for the purpose of constructing a railroad for itself, but was a mere instrument of another railroad company by which the real work of construction was to be carried on, it was held that these facts could not operate to exclude the first company from the rights granted by the statute. Denver, etc., R. Co. v. Alling, (1878) 99

U. S. 463, *reversing* (1878) 5 Fed. Cas. No. 2,387.

Acquirement of right of way by railroad construction company.—It is the duty of the railroad company and not of the construction company building the road, to do the things required by this Act to secure a right of way over public lands. It is neither lawful nor possible for the construction company to do the things required. *Fitzgerald v. Missouri Pac. R. Co.*, (1891) 45 Fed. Rep. 812.

Land subject to grant.—Lands ceded by Indians to the United States with power of sale and disposal, are public lands over which a railroad company may secure a right of way under the provisions of this Act. *Rierson v. St. Louis, etc., R. Co.*, (1898) 59 Kan. 32.

Land previously granted to a railroad by an Act of Congress under which the grantee had acquired a vested interest, is excepted from the operation of this Act so that another railroad cannot subsequently acquire a right of way thereunder over such land. *Washington, etc., R. Co. v. Cœur d'Alene R., etc., Co.*, (1889) 2 Idaho 550.

Grant subject to rights of prior settlers.—Where a person qualified to enter public land under the homestead, pre-emption, or timber culture laws, has acquired a possessory right to public land by the initiation of an entry in the manner prescribed by statute before a railroad company has filed its profile as required by this Act, the railroad company cannot, even before the issuance of a patent to such entryman, acquire a right of way over the land entered without making proper compensation to the entryman in the manner provided by law.

United States.—*Washington, etc., R. Co. v. Osborn*, (1895) 160 U. S. 103; *Spokane Falls, etc., R. Co. v. Ziegler*, (1894) 15 U. S. App. 472, *affirmed* (1897) 167 U. S. 65.

Colorado.—*Denver, etc., R. Co. v. Wilson*, (1900) 28 Colo. 6.

Florida.—*Savannah, etc., R. Co. v. Davis*, (1889) 25 Fla. 917.

Idaho.—*Washington, etc., R. Co. v. Osborne*, (1889) 2 Idaho 527.

Kansas.—*Chicago, etc., R. Co. v. Van Cleave*, (1894) 52 Kan. 665.

Minnesota.—*Red River, etc., R. Co. v. Sture*, (1884) 32 Minn. 95.

North Dakota.—*Jamestown, etc., R. Co. v. Jones*, (1898) 7 N. Dak. 619.

Oregon.—*Larsen v. Oregon R., etc., Co.*, (1890) 19 Oregon 240.

Washington.—*Enoch v. Spokane Falls, etc., R. Co.*, (1893) 6 Wash. 393; *Reidt v. Spokane Falls, etc., R. Co.*, (1893) 6 Wash. 623.

See also *Burlington, etc., R. Co. v. Johnson*, (1887) 38 Kan. 142.

Compare *Kinion v. Kansas City, etc., R. Co.*, (1893) 118 Mo. 571.

But where a pre-emption entryman relinquished his entry before perfecting his title, but after a railroad company had complied with this statute, and on the date of the relinquishment another person made a homestead entry of the same land, it

was held that the railroad company's rights were superior to those of the new homestead entryman. *Hamilton v. Spokane, etc., R. Co.*, 3 Idaho 164; *Jamestown, etc., R. Co. v. Jones*, (1898) 7 N. Dak. 619.

And where a homestead entryman abandoned his entry after having sold a right of way over the land under the provisions of R. S. sec. 2288, to a railroad company which had complied with the requirements of this Act, and the railroad company constructed its road and operated it continuously, it was held that its title to the right of way was good as against the United States and its grantees, so as to invalidate a subsequent homestead entry thereof. *Alexander v. Kansas City, etc., R. Co.*, (1897) 138 Mo. 464.

The same rule has been applied to the purchase of a right of way from the locators of a mining claim by a railroad company which had complied with the statutory requirements. On the abandonment of the claim by the locators, the land became part of the public domain, and the railroad company by virtue of this Act immediately acquired an easement which burdened the land in the hands of subsequent locators. *Bonner v. Rio Grande Southern R. Co.*, (1903) 31 Colo. 446.

It has even been held that where a railroad company made a definite location of its line, acquired the right of way and commenced the construction of its road, and within twelve months thereafter made a profile which was duly approved by the secretary of the interior, the secretary's approval perfected the grant of the right of way to the company, and the grant took effect as of the date of the company's location of its line so as to defeat an intervening homestead entry made by one who had knowledge of the location. *Kinion v. Kansas City, etc., R. Co.*, (1893) 118 Mo. 577.

This decision, however, is in direct conflict with *Enoch v. Spokane Falls, etc., R. Co.*, (1893) 6 Wash. 393, and *Reidt v. Spokane Falls, etc., R. Co.*, (1893) 6 Wash. 623, and seems to be contrary in principle to *Spokane Falls, etc., R. Co. v. Ziegler*, (1894) 15 U. S. App. 472, *affirmed* (1897) 167 U. S. 65; *Denver, etc., R. Co. v. Wilson*, (1900) 28 Colo. 6; *Chicago, etc., R. Co. v. Van Cleave*, (1894) 52 Kan. 665; *Red River, etc., R. Co. v. Sture*, (1884) 32 Minn. 95. See also *Washington, etc., R. Co. v. Cœur d'Alene R., etc., Co.*, (1895) 160 U. S. 77, (1892) 52 Fed. Rep. 765; *Radke v. Winona, etc., R. Co.*, (1888) 39 Minn. 262.

On the other hand it finds support in *Flint, etc., R. Co. v. Gordon*, (1879) 41 Mich. 420.

In any event, since the right of a pre-emption settler does not attach until he files his entry, a pre-emption entry made after the railroad company has filed its profile, by one who settled on the land before such filing, is subject to the railroad's right of way. *Lewis v. Rio Grande Western R. Co.*, 17 Utah 504.

A somewhat different rule has been laid down in the case of a homestead settler. In order for a railroad company to acquire a prior right, it seems that it must not only have complied with the requirements of this

Act before the initiation of the homestead entry, but also before the date of the homesteader's settlement. *Red River, etc., R. Co. v. Sture*, (1884) 32 Minn. 96.

Estoppel of prior settler.—Where a pre-emption settler notified a railroad company of his claim and protested against its action in entering on his land and building its road across the same, without compensating him therefor, but the company disregarded such protest and built its road, it was held that the settler was not estopped by the fact that he took no further steps to protect his possession until after he had received a patent for the land, provided he then asserted his legal rights before they were barred by limitation. *Denver, etc., R. Co. v. Wilson*, (1900) 28 Colo. 6.

Right of way over unsurveyed lands.—The Act does not limit the right of railroad companies to acquire ground for right of way and station purposes to surveyed lands. It plainly contemplates that a railroad may be extended across unsurveyed lands, and it simply requires that after the surveys are made a profile map shall be filed with and approved by the secretary of the interior. If the title has not been perfected by filing a map after survey (the land being yet unsurveyed) the land is not for that reason exposed to be taken under another claim. The appropriation of it for railroad purposes takes it out of the body of the public domain and prevents any settler from going on it and claiming it under any of the other land laws of the United States. *Ex p. Davidson*, (1893) 57 Fed. Rep. 883. And see section 4 of this Act, *infra*, p. 500.

Proof of organization condition precedent to acquirement of right of way.—The making of due proof that it is duly organized as a corporation in the manner required by the statute is a condition precedent to the right of a railroad company to acquire a right of way over public lands under the provisions of this statute. The mere making of a survey before making due proof of organization confers no right on the corporation. An attempt to exercise the privilege does not, by relation, become a vested right by the subsequent performance of the required conditions, but the several steps recited in the statute—the organization of the company, the due filing of its articles of incorporation, and due proof of such organization—must be taken by the corporation before it can obtain any claim whatever to a right of way over the public lands; and any of its acts or claims made to procure such right prior to a compliance with the statutory conditions are without authority of law, and can confer no rights as against another corporation which has complied with the law. And where a railroad, after filing its articles of incorporation, filed supplemental articles changing its route, it was held that the earliest date at which it was organized to build its road over the route as changed, was the date of the filing of the supplemental articles, and that due proof thereof was a condition precedent to its right to acquire a right of way over public lands. *Washington, etc., R. Co.*

r. Cœur d'Alene R., etc., Co., (1895) 160 U. S. 77, (1892) 52 Fed. Rep. 765. See also *Larsen r. Oregon R., etc., Co.*, (1890) 19 Oregon 240.

What is due proof of organization.—Where a statute of a state in which a railroad corporation was incorporated provided that the due incorporation of a company should, without further proof or acts, operate as its organization, it was held that the filing with the secretary of the interior of proof of incorporation operated also as proof of organization. *Washington, etc., R. Co. v. Cœur d'Alene R., etc., Co.*, (1892) 52 Fed. Rep. 765.

Right to take timber without application to land department.—This Act is a license to a railroad company "to take" the timber necessary for the construction of its road, without application to, or consent of, any officer of the land department, and the land department has no authority to make any regulations on the subject of such license. *U. S. v. Chaplin*, (1887) 31 Fed. Rep. 890.

Taking timber from adjacent public lands—construction of "adjacent."—In order for public lands to be adjacent within the meaning of this Act, they must be "in proximity, contiguous, or near to the line of the road. While 'proximity' or 'nearness' to an object is somewhat uncertain as a measure of distance, yet the use of such words as a definition brings to the mind the idea that lands which are in fact far off or distant are not adjacent." *U. S. v. St. Anthony R. Co.*, (1904) 192 U. S. 524, *reversing* (C. C. A. 1902) 114 Fed. Rep. 722.

"What is 'adjacent' land, within the meaning of the statute, must depend on the circumstances of each particular case. Where the 'adjacent' ends and the nonadjacent begins may be difficult to determine. On the theory that the material is taken on account of the benefit resulting to the land from the construction of the road, * * * the term 'adjacent' ought not to be construed to include any land save such as by its proximity to the line of the road is directly and materially benefited by its construction." *U. S. v. Chaplin*, (1887) 31 Fed. Rep. 890, *followed in* *Bachelder v. U. S.*, (C. C. A. 1897) 83 Fed. Rep. 986.

Without deciding at what point adjacency begins, it has been held that lands twenty miles distant could not be regarded as adjacent within the meaning of the statute. *U. S. v. St. Anthony R. Co.*, (1904) 192 U. S. 524, *reversing* (1902) 114 Fed. Rep. 722.

And it has also been held that it could not fairly be said under any reasonable construction of the language of this Act that timber was taken from lands "adjacent to the line" of the railroad in the construction of which it was used, where it was taken from public lands about fifty miles distant from such railroad. *Stone v. U. S.*, (C. C. A. 1894) 64 Fed. Rep. 667, *affirmed* (1897) 167 U. S. 178.

Timber cut from adjacent lands for use at distant point on line.—A railroad company is not restricted in its use of the timber to places on the line of its road adjacent to the locality from which the timber was taken.

While the Act limits the railroad company in respect to the locality from which the timber may be taken, it does not, either by express terms or by any fair or necessary implication, place any limitation as to the place at which such timber may be used. The intention of Congress would be narrowed, if not defeated, if it were held that the timber could be used rightfully only on such portions of the line as are contiguous to the place from which it is taken. *U. S. v. Denver, etc., R. Co.*, (1893) 150 U. S. 1, *affirmed* (1888) 34 Fed. Rep. 838.

Purposes for which timber may be used.—Section and depot houses, snow-sheds and fences are to be considered a part of a railroad within the purview of this Act, and therefore timber may be taken from public lands for the purpose of constructing such erections. *Denver, etc., R. Co. v. U. S.*, (1888) 34 Fed. Rep. 838, *affirmed* (1893) 150 U. S. 1, *modifying* (1887) 31 Fed. Rep. 886.

Timber may be taken under this Act for the construction of station buildings, depots, machine-shops, sidetracks, turnouts, water-stations, and the like. *U. S. v. Chaplin*, (1887) 31 Fed. Rep. 890.

In *Denver, etc., R. Co. v. U. S.*, (C. C. A. 1903) 124 Fed. Rep. 156, the court, in modifying a preliminary injunction, reserved the following questions for decision on the final hearing:

Has a railroad company the right to take timber from public lands adjacent to its right of way to change a completed narrow-gauge into a broad-gauge road, or to repair the broad-gauge road after the change?

Has a railroad company the right to take timber from lands adjacent to one of the lines of railway numbered and specified in the original grant of its franchises to its predecessor, and use such timber to repair another of those lines?

Has a railroad company or its agents the right to the surplus lumber arising from logs found inapplicable, on account of rot or other latent defects, and from the side cuts of the logs that are used for railroad purposes?

Timber grant is for construction, not for repairs or improvements.—The grant of the right to use timber is only to aid in the first construction of the railroad, and when it is completed the grant is exhausted, hence it is unlawful to cut timber for the purpose of making repairs or for making additions, extensions, or improvements to a line of road already completed. *Denver, etc., R. Co. v. U. S.*, (1888) 34 Fed. Rep. 838, *affirmed* (1893) 150 U. S. 1, *modifying* (1887) 31 Fed. Rep. 886.

But a branch line authorized by the charter of the company is a part of the original line of railroad and is not a mere addition to a fully completed road. Hence a railroad has the right to take timber for the construction of such a branch though such construction is not commenced until the lapse of several years after the completion of the main line. *U. S. v. Price Trading Co.*, (C. C. A. 1901) 109 Fed. Rep. 239.

Duty of railroad to use timber economically.—It is the duty of a railroad company to use economically and advantageously the timber which it takes, so that the excess arising from the process of developing it into such shape as will make it available for use for construction purposes shall be as small as possible and shall make the loss to the government as slight as it can be made. It has no right to abuse its privilege, recklessly or designedly, by so cutting the timber as to create an unnecessary and valuable surplus of lumber for its own use. *Denver, etc., R. Co. v. U. S.*, (C. C. A. 1903) 124 Fed. Rep. 156.

Cutting timber before complying with requirements of Act.—A railroad company has no right to cut timber under the provisions of this Act until it has accepted the offer made thereby by filing the prescribed papers with the secretary of the interior. Nor does the subsequent filing of its articles of incorporation and proof of organization with the secretary of the interior purge the act of its wrongful character. It has no right to use thereafter timber cut before the acceptance required by the Act, as the Act does not give the right to appropriate timber already cut. *U. S. v. Eccles*, (1901) 111 Fed. Rep. 490.

Purchase of timber unlawfully cut.—In an action by the United States for unlawful cutting and removal of timber from public lands, it was held that the defendant was not relieved from liability by the fact that the timber was sold to a railroad company which had the right, so long as it was standing, to cut and appropriate it under the provisions of this Act, as the timber remained the property of the United States after its wrongful cutting, and that title could not be divested by an arrangement to which the United States did not give its assent. *U. S. v. Price Trading Co.*, (C. C. A. 1901) 109 Fed. Rep. 239. Compare *U. S. v. Chaplin*, (1887) 31 Fed. Rep. 890, holding that if a person not in the employment of a railroad company and having no contract therewith, cuts timber off the public lands adjacent to the line of the company's road, and the company acquires the same for the purpose of constructing its road, and so uses it, neither such person nor the company is liable therefor as a wrongdoer.

Burden of proving that cutting was authorized.—In an action brought by the United States to recover damages from a railroad company for the taking of timber from the public lands, the burden is on the defendant to show that the taking of the timber was authorized by this statute. And where the evidence shows that some of the timber was taken before the railroad had complied with the requirements of the Act as to the filing of proof of organization with the secretary of the interior, and there is nothing to show that any of the timber was taken after the company had complied with the Act, it was held that the United States was entitled to a judgment for the entire amount of timber taken. *U. S. v. Eccles*, (1901) 111 Fed. Rep. 490.

Liability of railroad company for unlawful

taking of timber.—A railroad company is liable to the United States as a wrongdoer if it takes timber from public land not adjacent to the line of its road, or takes more than is permitted by the statute, *U. S. v. Chaplin*, (1887) 31 Fed. Rep. 890; (1890) 19 Op. Atty-Gen. 546; or if it takes timber for construction purposes before having complied with the requirements of the statute which are conditions precedent to its right to do so, (1890) 19 Op. Atty-Gen. 546.

Good faith no defense to unlawful cutting.—A railroad is liable to the United States for the value of timber cut for use in its construction over public lands that are not "adjacent" to its line within the meaning of this Act, though it does so in the belief that the lands are so adjacent, and with no intention of violating any law or doing any wrongful act. *U. S. v. St. Anthony R. Co.*, (1904) 192 U. S. 524, *reversing* (C. C. A. 1902) 114 Fed. Rep. 722.

Measure of damages for unlawful cutting.—Where a railroad has in good faith, but acting under a mistake, taken timber which it was not authorized to take by the terms of this Act, the measure of damages is the

value of the timber at the time when and at the place where it was taken. *U. S. v. St. Anthony R. Co.*, (1904) 192 U. S. 524, *reversing* (C. C. A. 1902) 114 Fed. Rep. 722; *U. S. v. Eccles*, (1901) 111 Fed. Rep. 490.

Right to grant for station purposes does not attach until right of way is acquired.—By the terms of the statute, no right to ground for station purposes attaches until the right of way is secured by a compliance on the part of the railroad company with the provisions of the Act, as the grant is of "ground adjacent to such right of way for station buildings," etc. Hence, where a railroad company filed a map of the lands it desired for station purposes before filing the profile of its road required by section 4 of the Act, and thereafter it filed the profile which was approved by the secretary of the interior, but before such filing and approval a person settled on the land desired by the railroad for station purposes and filed his declaratory statement, it was held that the settler acquired a right to the land settled on, which was superior to the claim of the railroad company. *Lilienthal v. Southern California R. Co.*, (1893) 56 Fed. Rep. 701.

SEC. 2. [*Rights of several roads through cañon, pass, or defile—grade crossings—effect on wagon roads.*] That any railroad company whose right of way, or whose track or road-bed upon such right of way, passes through any canyon, pass, or defile, shall not prevent any other railroad company from the use and occupancy of the said canyon, pass, or defile, for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade. And the location of such right of way through any canyon, pass, or defile shall not cause the disuse of any wagon or other public highway now located therein, nor prevent the location through the same of any such wagon road or highway where such road or highway may be necessary for the public accommodation; and where any change in the location of such wagon road is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall before entering upon the ground occupied by such wagon road, cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road: *Provided*, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile. [18 Stat. L. 482.]

Rights of rival railroads through canyon.—Where a railroad company was granted a right of way through the Grand Canyon of the Arkansas in 1872, but had made no actual location of its line through the canyon nor any occupancy thereof, in good faith, for the purpose of constructing its road, prior to the passage of this Act, and in 1877 it was granted an extension of time for the completion of its road, it was held that such extension was granted subject to the terms of this Act. Another railroad company claiming a right of way through the canyon under the provisions of this Act, and the trial court having decided that the second company had, by prior occupancy, secured a right to use the canyon superior to that of the first company, it was held on appeal, that the first company should be allowed to proceed with the construction of its road un-

obstructed by the second company; that where the canyon was broad enough to enable both companies to proceed without interference with each other in the construction of their respective roads, they should be allowed to do so; that in the narrow portions of the defile where it was impracticable to lay more than one track, the court, by proper orders, should recognize the right of the first company to construct its work, but should, by proper orders, and on such terms as might be just and equitable, establish and secure the right of the second company to use the roadbed and track, after completion, in common with the first company. *Denver, etc., R. Co. v. Alling*, (1878) 99 U. S. 463, *followed* in *Montana Cent. R. Co. v. Helena, etc., R. Co.*, (1887) 6 Mont. 416. See also *Denver, etc., R. Co. v. Denver, etc., R. Co.*, (1883) 17 Fed. Rep. 867.

SEC. 3. [*Condemnation of private rights.*] That the legislature of the proper Territory may provide for the manner in which private lands and possessory claims on the public lands of the United States may be condemned; and where such provision shall not have been made, such condemnation may be made in accordance with section three of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two," approved July second, eighteen hundred and sixty-four. [18 Stat. L. 482.]

The Acts referred to are Acts of July 1, 1862, ch. 120, 12 Stat. L. 489, and July 2, 1864, ch. 216, sec. 3, 13 Stat. L. 357.

SEC. 4. [*Profile of road to be filed—patents subject to right of way—forfeiture of rights.*] That any railroad-company desiring to secure the benefits of this act, shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: *Provided*, That if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road. [18 Stat. L. 483.]

Filing of profile not required while lands are unsurveyed.—Washington, etc., R. Co. v. Cœur d'Alene R., etc., Co., (1892) 52 Fed. Rep. 765; Denver, etc., R. Co. v. Hanoum, (1893) 19 Colo. 162.

Hence a railroad company which constructed its line of unsurveyed public lands thereby definitely located its right of way and acquired title thereto as against a subsequent locator of a mining claim, though the officers of the land department declined to accept the profile until such lands were surveyed by the government. Pennsylvania Min., etc., Co. v. Everett, etc., R. Co., (1902) 29 Wash. 102.

And when a railroad has filed due proof of its organization and has located its right of way over unsurveyed public lands, it has twelve months after the government survey in which to file the required profile. Rio Grande Western R. Co. v. Telluride Power, etc., Co., (1897) 16 Utah 125. *writ of error dismissed* (1900) 175 U. S. 639.

Right of secretary of interior to recall approval.—Where a railroad made application to the secretary of the interior with a view of securing the benefits of this Act, and its record of incorporation and map of definite location were approved by the secretary, but it subsequently appeared that the action

of the secretary was based on a mistake of fact caused by the representation of the railroad company itself, and that the application was for a purpose not within the intention of the statute, it was held by the attorney-general that it was competent for the secretary to recall and annul his action approving the line of definite location of the road and entering the same on the public plats. (1890) 19 Op. Atty-Gen. 546.

But in a proceeding brought by the railroad company in question to enjoin the secretary from taking such action, it was held that the secretary could not revoke the action of his predecessor in approving the record of incorporation and map of definite location, such action being conclusive as against collateral attack. Noble v. Union River Logging R. Co., (1893) 147 U. S. 165.

Failure to complete road does not revoke grant ipso facto.—Failure to complete the road within the time limited is a condition subsequent, which does not operate *ipso facto* as a revocation of the grant, but only authorizes the government itself to take advantage of the failure and forfeit the grant by judicial proceeding or by an Act of Congress resuming title to the lands included in the grant. Utah, etc., R. Co. v. Utah, etc., R. Co., (1901) 110 Fed. Rep. 879.

SEC. 5. [*Act not to apply to lands in reservations, etc.*] That this act shall not apply to any lands within the limits of any military, park, or Indian reservation, or other lands especially reserved from sale, unless such right of

way shall be provided for by treaty-stipulation or by act of Congress heretofore passed. [18 Stat. L. 483.]

SEC. 6. [*Amendments, etc.*] That Congress hereby reserves the right at any time to alter, amend, or repeal this act, or any part thereof. [18 Stat. L. 483.]

An Act To require railroad companies operating railroads in the Territories over a right of way granted by the Government to establish stations and depots at all town sites on the lines of said roads established by the Interior Department.

[Act of Aug. 8, 1894, ch. 236, 28 Stat. L. 263.]

[SEC. 1.] [*Railways to have stations at town sites.*] That all railroad companies operating railroads through the Territories of the United States over a right of way obtained under any grant or Act of Congress giving to said railroad companies the right of way over the public lands of the United States shall be required to establish and maintain passenger stations and freight depots at or within one-fourth of a mile of the boundary limits of all town sites already established in said Territories on the line of said railroads by authority of the Interior Department. [28 Stat. L. 263.]

SEC. 2. [*Time to establish stations, etc. — penalty for failure.*] That said railroad companies are hereby required within three months from the passage of this Act to establish at or within one-fourth of a mile of the boundary limits of all town sites provided for in the preceding section, passenger stations, freight depots, and other accommodations necessary for receiving and discharging passengers and freight at such points; and upon failure of said companies to establish such stations and depots within said time said companies shall be liable to a fine of five hundred dollars for each day thereafter until said stations and depots shall be established, which shall be recovered in a suit brought by the United States in the United States courts in any Territory through which said railroads may pass. [28 Stat. L. 263.]

An Act To amend an Act granting to railroads the right of way through the public lands of the United States, approved March third, eighteen hundred and seventy-five.

[Act of Feb. 27, 1901, ch. 614, 31 Stat. L. 815.]

[*Right of way for railroads in Minnesota over lands reserved for reservoirs, etc.*] That all lands in the State of Minnesota described in and withdrawn from sale by the proclamations of the President of the United States for the reason that said lands would be required for or subject to flowage in the construction of dams, reservoirs, and other works proposed to be erected for the improvement of the navigation of the Mississippi River and certain of its tributaries, be, and the same are hereby, declared to be, and to have been at all times heretofore, subject to the provisions of a certain Act of Congress entitled "An Act granting to railroads the right of way through the public lands of the United States," approved March third, eighteen hundred and seventy-five, as fully, effectually, and to the same extent as though said lands had not been described in said proclamations, or withdrawn from sale thereby, but had remained with the body of public lands subject to private entry and sale: *Provided, however,* That any and all parts of said lands acquired by any railroad company under said Act of Congress shall at all times be subject to the right of flowage which at any time may become necessary in the construction or maintenance of dams, reservoirs, or other works which may be constructed

or erected by or under the authority of the United States for the improvement of the navigation of the Mississippi River and its tributaries: *Provided further*, That the railroad companies availing themselves of this Act shall, in addition to filing the maps now required by law to be filed, also file maps of definite location with elevation of rail of their lines of railroad over said water-reserve lands in the office of the Secretary of War; and no location shall be permitted which takes for right of way or stations or interferes with submergence of lands needed for the use of the present reservoir system, or in the construction of dams or other works, or any proposed or probable extension of the same, or which will obstruct or increase the cost of the present or prospective reservoir system: *Provided further*, That the plan for the location and construction of any such railway, or any part thereof, shall be first submitted to the Secretary of War and approved by him and by the Chief of Engineers of the United States Army. [31 Stat. L. 815.]

[SEC. 1.] [*Reservation in patents of right of way for ditches or canals.*]
 * * * That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States. * * * [26 Stat. L. 391.]

This is from the Sundry Civil Appropriation Act of Aug. 30, 1890, ch. 837.

SEC. 18. [*Right of way through public lands and reservations to canal or ditch companies for irrigation.*] That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation and duly organized under the laws of any State or Territory, which shall have filed, or may hereafter file, with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take, from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the Department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories. [26 Stat. L. 1101.]

This and sections 19-21 following are from the Act of March 3, 1891, ch. 561, "An Act to repeal timber-culture laws, and for other purposes."

Nature and extent of rights granted by Act.—It is obvious that by this Act and the Act of March 3, 1877, ch. 107, 19 Stat. L. 377, "so far as they extended, Congress recognized and assented to the appropriation

of water in contravention of the common-law rule as to continuous flow. To infer therefrom that Congress intended to release its control over the navigable streams of the country and to grant in aid of mining industries and the reclamation of arid lands the right to appropriate the waters on the sources of navigable streams to such an extent as to destroy their navigability, is to

carry those statutes beyond what their fair import permits. This legislation must be interpreted in the light of existing facts—that all through this mining region in the West were streams, not navigable, whose waters could safely be appropriated for mining and agricultural industries, without serious interference with the navigability of the rivers into which those waters flow. And in reference to all these cases of purely local interest the obvious purpose of Congress was to give its assent, so far as the public lands were concerned, to any system, although in contravention to the common-law rule, which permitted the appropriation of those waters for legitimate industries. To hold that Congress, by these Acts, meant to confer upon any state the right to appropriate all the waters of the tributary streams which unite into a navigable watercourse, and so destroy the navigability of that watercourse in derogation of the interests of all the people of the United States, is a construction which cannot be tolerated. It ignores the spirit of the legislation and carries the statute to the verge of the letter and far beyond what under the circumstances of the case must be held to have been the intent of Congress.” *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 690.

Territorial legislation regulating use of waters.—It is evident that it was the purpose of Congress to recognize by this Act the legislation of a territory with respect to the regulation of the use of public waters, as well as that of a state. The provisions of the corporation laws of New Mexico in 1897 in regard to the formation, organization, and regulation of irrigation companies are not inconsistent with this Act, nor are they invalid as assuming to dispose of the property of the United States without its consent. *Gutierrez v. Albuquerque Land, etc., Co.*, (1903) 188 U. S. 545.

SEC. 19. [Maps to be filed — grants subject to right of way — damages to settlers.] That any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage. [26 Stat. L. 1102.]

See note to section 18, *supra*.

Lands appropriated before approval of map.—The approval by the secretary of the interior of the map of location of a reservoir site, filed under the provisions of this Act, carries only the right of way over public lands covered by such location which are

Control of navigable rivers not affected.—There is nothing in this Act or its purposes which was intended to affect the control or supervision of the navigable rivers of the United States. Such control and supervision are vested in the secretary of war. Hence the Act confers on the secretary of the interior no power to grant a right to construct dams across the Rio Grande for the purpose of checking the flow of water and distributing it for irrigation purposes. (1897) 21 Op. Atty-Gen. 518.

Purposes for which right of way may be used.—“It is clear that a right of way of this character constitutes but an easement granted for, and limited to, the purpose mentioned in the Act, and it gives the owner of the easement no right to occupy or use the surface of the land embraced within it for any other purpose than that specified. Such owner may enter thereon and construct a canal, ditch, or reservoir, and after constructing, do all things necessary to maintain, care for, and operate the same; but having merely an easement over, and not the fee in, the land, he has no right to occupy or use it for anything not necessary for the protection and operation of that which he has lawfully constructed thereon. After the right to such an easement has been perfected or acquired in accordance with the provisions of the Act, the title to the fee still remains in the United States. Thereafter, upon the land being disposed of by the government, such title passes to the patentee, and he or his grantee may prevent the use of the right of way for any purpose foreign to that for which the easement was granted.” Hence, the erection of a saloon on the right of way by the owner of the easement is a clear infringement of the rights of the owner of the fee. *Whitmore v. Pleasant Valley Coal Co.*, (1904) 27 Utah 284.

vacant and unappropriated at the time of the approval, and in no wise affects other tracts. Hence the locator of such a reservoir acquires no right of way over lands disposed of by the government before the approval of his map. *Nippel v. Forker*. (1899) 26 Colo. 74.

SEC. 20. [*Applicable to existing and future canals, etc. — forfeiture for noncompletion.*] That the provisions of this act shall apply to all canals, ditches, or reservoirs, heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir, has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior, and with the register of the land office where said land is located, a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: *Provided*, That if any section of said canal, or ditch, shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture. [26 Stat. L. 1102.]

See note to section 18, *supra*.

SEC. 21. [*Rights granted only for canal use.*] That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch. [26 Stat. L. 1102.]

An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes.

[Act of Jan. 21, 1895, ch. 37, 28 Stat. L. 635.]

[SEC. 1.] [*Right of way through public lands for tramroads, canals, or reservoirs.*] That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military or Indian reservation, for tramroads, canals or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof; or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way upon the public lands of the United States, not within limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs, and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses. [28 Stat. L. 635, 30 Stat. L. 404.]

This section was amended by the Act of May 11, 1898, ch. 292, sec. 1, by adding the second paragraph above given. See *infra*, p. 512.

SEC. 2. [*Right of way to electric-power companies.*] That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regu-

lations to be fixed by him, to permit the use of right of way to the extent of twenty-five feet, together with the use of necessary ground, not exceeding forty acres, upon the public lands and forest reservations of the United States, by any citizen or association of citizens of the United States, for the purposes of generating, manufacturing, or distributing electric power. [29 Stat. L. 120.]

This section was added by Act of May 14, 1896, ch. 179, 29 Stat. L. 120, entitled "An Act To amend the Act approved March third, eighteen hundred and ninety-one, granting the right of way upon the public lands for reservoir and canal purposes," in the following terms: "That the Act entitled 'An Act to permit the use of the right

of way through the public lands for tram-roads, canals, and reservoirs, and for other purposes,' approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following:" giving the section as above set out.

An Act To grant right of way over the public domain for pipe lines in the States of Colorado and Wyoming.

[Act of May 21, 1896, ch. 212, 29 Stat. L. 127.]

[SEC. 1.] [*Right of way for pipe lines in Colorado and Wyoming.*] That the right of way through the public lands of the United States situate in the State of Colorado and in the State of Wyoming outside of the boundary lines of the Yellowstone National Park is hereby granted to any pipe line company or corporation formed for the purpose of transporting oils, crude or refined, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by said pipe line and twenty-five feet on each side of the center line of the same; also the right to take from the public lands adjacent to the line of said pipe line material, earth, and stone necessary for the construction of said pipe line. [29 Stat. L. 127.]

SEC. 2. [*Applications — approval.*] That any company or corporation desiring to secure the benefits of this Act shall, within twelve months after the location of ten miles of the pipe line, if the same be upon surveyed lands and if the same be upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its line, and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way. [29 Stat. L. 127.]

SEC. 3. [*Limit of time for completion.*] That if any section of said pipe line shall not be completed within five years after the location of said section the right herein granted shall be forfeited, as to any incomplete section of said pipe line, to the extent that the same is not completed at the date of the forfeiture. [29 Stat. L. 127.]

SEC. 4. [*Use restricted to pipe line.*] That nothing in this Act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care. [29 Stat. L. 127.]

An Act Providing for the location and purchase of public lands for reservoir sites.

[Act of Jan. 13, 1897, ch. 11, 29 Stat. L. 484.]

[SEC. 1.] [*Reservoirs for live stock upon unoccupied public land.*] That any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock may construct reservoirs upon

unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such live stock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding one hundred and sixty acres, so long as such reservoir is maintained and water kept therein for such purposes: *Provided*, That such reservoir shall not be fenced and shall be open to the free use of any person desiring to water animals of any kind. [29 Stat. L. 484.]

SEC. 2. [*Declaratory statement.*] That any person, live-stock company, or corporation desiring to avail themselves of the provisions of this Act shall file a declaratory statement in the United States land office in the district where the land is situated, which statement shall describe the land where such reservoir is to be or has been constructed; shall state what business such corporation is engaged in; specify the capacity of the reservoir in gallons, and whether such company, person, or corporation has filed upon other reservoir sites within the same county; and if so, how many. [29 Stat. L. 484.]

SEC. 3. [*Time for completion — survey — sites reserved.*] That at any time after the completion of such reservoir or reservoirs which, if not completed at the date of the passage of this Act, shall be constructed and completed within two years after filing such declaratory statement, such person, company, or corporation shall have the same accurately surveyed, as hereinafter provided, and shall file in the United States land office in the district in which such reservoir is located a map or plat showing the location of such reservoir, which map or plat shall be transmitted by the register and receiver of said United States land office to the Secretary of the Interior and approved by him, and thereafter such land shall be reserved from sale by the Secretary of the Interior so long as such reservoir is kept in repair and water kept therein. [29 Stat. L. 484.]

SEC. 4. [*Amendments, etc.*] That Congress may at any time amend, alter, or repeal this Act. [29 Stat. L. 484.]

An Act To amend an Act to permit the use of the right of way through public lands for tramroads, canals, and reservoirs, and for other purposes.

[Act of May 11, 1898, ch. 292, 30 Stat. L. 404.]

[SEC. 1.] [*Amends Act of Jan. 21, 1895, ch. 37, sec. 1.*] That the Act entitled "An Act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following: [*incorporated in Act amended, supra*, p. 510.]

SEC. 2. [*Right of way for water transportation, for domestic purposes, or for development of power.*] That the rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the Act entitled "An Act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, and subsidiary to the main purpose of irrigation. [30 Stat. L. 404.]

[SEC. 1.] [*Right of way over forest reserves and reservoir sites for wagon roads, railroads, or highway.*] * * * That in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby. * * * [30 Stat. L. 1233.]

This is from the Deficiencies Appropriation Act of March 3, 1899, ch. 427.
See further **TIMBER LANDS AND FOREST RESERVES.**

An Act Relating to rights of way through certain parks, reservations, and other public lands.

[*Act of Feb. 15, 1901, ch. 372, 31 Stat. L. 790.*]

[*Right of way over public lands, reservations, and public parks, for electric lines, canals, tunnels, etc.*] That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this Act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park. [31 Stat. L. 790.]

In Indian Territory.—See **INDIANS**, vol. 3, p. 514.

[XIX. MISCELLANEOUS PROVISIONS RELATING TO THE PUBLIC LANDS.]

Sec. 2447. [*Patents to issue for claims heretofore confirmed.*] In case of any claim to land in any State or Territory which has heretofore been confirmed by law, and in which no provision is made by the confirmatory statute

for the issue of a patent, it may be lawful, where surveys for the land have been or may hereafter be made, to issue patents for the claims so confirmed, upon the presentation to the Commissioner of the General Land-Office of plats of survey thereof, duly approved by the surveyor-general of any State or Territory, if the same be found correct by the Commissioner. But such patents shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land. [R. S.]

Act of Dec. 22, 1854, ch. 10, 10 Stat. L. 599.

Sections 2447-2490 constitute chapter 11 of title 32 of the Revised Statutes entitled as above.

Act directory, not mandatory.—This section does not require the issuance of a patent in any case, but only permits it, makes it lawful, and thereby leaves it to the discretionary judgment of the land department, to be guided by the particular circumstances of each case. (1864) 11 Op. Atty.-Gen. 47.

Act retrospective, not prospective.—This section, in express terms, limits the authority to issue patents to claims to lands theretofore confirmed by law. It makes no provision for claims confirmed at any time thereafter. (1863) 10 Op. Atty.-Gen. 507.

Construction of words "confirmed by law."—The words "confirmed by law" mean confirmation by the Act of that power which under our system enacts law, and not confirmation by mere construction of law, such as may exist at common law. Where by valid enactment the law-making power had declared the title to public land to be in a certain person prior to Dec. 22, 1854, the issuance of a patent therefor was authorized by this Act. It is the fact of a special legislative recognition and declaration of his title, and not the mere form of that recognition and declaration, which confers on the person a right to a patent under this Act. Hence a confirmation by treaty is a confirmation by law within the meaning of this Act, as a treaty is to be regarded as an Act of the legislature whenever it operates without the aid of any legislative provision. (1863) 10 Op. Atty.-Gen. 507.

Confirmation of claims to specific lands.

—This section applies only to the case of a claim to land "which has heretofore been confirmed by law." It has no application

where there has been no claim confirmed to any specific tract of land, but only the grant of a right to locate anywhere within a specified territory. *Shaw v. Kellogg*, (1898) 170 U. S. 312, 342.

Patent for land in excess of quantity confirmed.—Where Congress passed an Act confirming a grant within certain named out-boundaries, and thereafter a patent therefor was issued under this section, pursuant to a survey made by the government, it was held that the United States could maintain a bill to set aside the patent for the fraud of the surveyors in so running the lines as to extend beyond the out-boundaries and include a large quantity of land which Congress did not intend to include in the confirmation of the grant, as no public officials have the right to give away, either directly or indirectly, public lands not granted by Congress. It was also held that purchasers after the issuance of the patent took with notice that Congress only confirmed the grant as originally petitioned for and that officers of the government had no authority to issue a patent for any land outside those boundaries. *U. S. v. Maxwell Land-Grant Co.*, (1884) 21 Fed. Rep. 19.

Patent issued on survey not approved by surveyor-general is void.—*Dulles v. Missionary Soc.*, (1879) 6 Fed. Rep. 356, 6 Sawy. (U. S.) 126, *affirmed* (1882) 107 U. S. 336.

Patent conveys title of United States only.—If the United States had, at the date of a patent issued under this section, no title to the lands described therein, the patent conveyed none, and is not conclusive of a controversy between conflicting claimants to the land. *Missionary Soc. v. Dalles*, (1882) 107 U. S. 336, *affirming* (1879) 6 Fed. Rep. 356, 6 Sawy. (U. S.) 126.

Sec. 2448. [*Patents issued to persons who had died before issue, effect of.*]

Where patents for public lands have been or may be issued, in pursuance of any law of the United States, to a person who had died, or who hereafter dies, before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentee as if the patent had issued to the deceased person during life. [R. S.]

Act of May 20, 1836, ch. 76, 5 Stat. L. 31.

Patent to deceased person inures to heirs.

—By this section Congress provided that a patent issued in the name of a deceased person should inure to the benefit of his heirs, as fully as if the grant had been perfected during the decedent's life, *Galloway v. Fin-*

ley, (1838) 12 Pet. (U. S.) 264; *Schedda v. Sawyer*, (1846) 4 McLean (U. S.) 181.

"This is undoubtedly a proper statute, as it relieves from a mistake in behalf of heirs" *Schedda v. Sawyer*, (1846) 4 McLean (U. S.) 181.

Title inures to assignee of equitable title.

—The title inures under this Act to one claiming, not the legal, but the equitable, title existing when the patent issued; and in him the legal title is vested by the patent. Of course, an assignee, by a *bona fide* conveyance, would come in before a volunteer, such as an heir or devisee. *Landes v. Brant* (1850) 10 How. (U. S.) 348, 373; *Crews v. Burcham*, (1861) 1 Black (U. S.) 352.

Thus, as between the grantee of the decedent under a conveyance executed before issuance of the patent and the grantee of the heir under a deed executed after the issuance of the patent, the title of the former must prevail. *Crews v. Burcham*, (1861) 1 Black (U. S.) 352.

Patent issued under Oregon Donation Act. —If this section can be construed as applying to patents issued under the Act of Sept. 27, 1850 (commonly known as the Donation Act of Oregon), where the person originally entitled to the patent has died before the

patent issues, its language must be construed in connection with, and be limited by, the provisions of the Donation Act giving the property of a deceased husband or wife to the survivor and children or heirs of the deceased unless otherwise disposed of by law; and in such case the patent must be held to inure to the persons designated in the Donation Act, instead of to the heirs solely as specified in this section. *Davenport v. Lamb*, (1871) 13 Wall. (U. S.) 418; *Lamb v. Starr*, (1867) *Deady* (U. S.) 447; *Traver v. Tribou*, (1883) 15 Fed. Rep. 25. See also *Hershberger v. Blewett*, (1892) 55 Fed. Rep. 170.

This Act has no application "to grants issued by alcaldes in the pueblo of San Francisco, whose authority never extended to the alienation of any public lands, but only to lands belonging to the pueblo." *Montgomery v. Bevans*, (1871) 1 Sawy. (U. S.) 663, 17 Fed. Cas. No. 9,735.

Sec. 2449. [*Fee simple to pass in all grants of land to states and territories.*] Where lands have been or may hereafter be granted by any law of Congress to any one of the several States and Territories, and where such law does not convey the fee-simple title of the lands, or require patents to be issued therefor, the list of such lands which have been or may hereafter be certified by the Commissioner of the General Land-Office, under the seal of his office, either as originals or copies of the originals or records shall be regarded as conveying the fee-simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be perfectly null and void and no right, title, claim, or interest shall be conveyed thereby. [R. S.]

Act of Aug. 3, 1854, ch. 201, 10 Stat. L. 346.

Nature of grants to which section applies. —This section prescribes the duties of the commissioner of the general land office in regard to legislative grants where the law does not convey the fee-simple title or require patents to be issued for the lands. It does not apply to grants made under statutes vesting the fee-simple title in the states to which the lands are granted. (1857) 9 Op. Atty.-Gen. 41; (1874) 14 Op. Atty.-Gen. 617. Compare *Carter v. Ruddy*, (1897) 166 U. S. 493.

When granting Act requires issuance of patent. —Though, under some circumstances, a certification of a list of lands to the grantee operates to transfer title under the provisions of this section, whenever the granting Act specifically provides for the issuance of a patent the rule is that the legal title remains in the United States until the patent is issued. *Michigan Land, etc., Co. v. Rust*, (1897) 168 U. S. 589.

And it seems, notwithstanding the provisions of this section, a patent may, under some circumstances, be necessary to convey the legal title, though the granting statute does not in terms provide for the issuance of a patent. *Carter v. Ruddy*, (1897) 166 U. S. 493.

Certified list operates as patent. —A certified list issued under and pursuant to this section has the same force and effect as a patent. *Leavenworth, etc., R. Co. v. U. S.* (1875) 92 U. S. 733; *Fraser v. O'Connor*, (1885) 115 U. S. 102; *Mower v. Fletcher*, (1886) 116 U. S. 380; *McCreery v. Haskell*, (1886) 119 U. S. 327; *Hough v. Buchanan*, (1886) 27 Fed. Rep. 328; *Buena Vista Petroleum Co. v. Tulare Oil etc., Co.*, (1895) 67 Fed. Rep. 226; *Garrard v. Silver Peak Mines, (C. C. A. 1899) 94 Fed. Rep. 983.*

The certified list operates on the state's selection as of the date when made and reported to the local land office, and cuts off all intervening claims in the same manner that a patent would. *McCreery v. Haskell*, (1886) 119 U. S. 327.

Certified list including land not embraced in grant. —The action of the officers of the land department in certifying a list including lands not embraced in the original grant transfers no title to the state, as they cannot enlarge the scope or operation of a grant made by Congress. *Leavenworth, etc., R. Co. v. U. S.*, (1875) 92 U. S. 733; *Weeks v. Bridgman*, (1895) 159 U. S. 541, *affirming* (1889) 41 Minn. 352; *Patterson v. Tatum*, (1874) 3 Sawy. (U. S.) 164, 18 Fed. Cas. No. 10,830; *Sutton v. Fassett*, (1875) 51

Cal. 12; *McLaughlin v. Menotti*, (1891) 89 Cal. 354; *American Emigrant Co. v. Fuller*, (1891) 83 Iowa 599.

Thus, the certified list is ineffectual to pass the title to land which was excluded from the operation of the grant because it had been reserved for the use of the Indians, Leavenworth, etc., *R. Co. v. U. S.*, (1875) 92 U. S. 733; or had been included in a prior grant to aid in the construction of a railroad, *Paterson v. Tatum*, (1874) 3 Sawyer. (U. S.) 164, 18 Fed. Cas. No. 10,830; *McLaughlin v. Menotti*, (1891) 89 Cal. 354; or had been entered previously under the pre-emption laws, *Weeks v. Bridgman*, (1895) 159 U. S. 541, *affirming* (1889) 41 Minn. 352.

Conclusiveness of certified list.—The certification by the commissioner of the general

land office is a determination that the lands listed are of the character included in the grant, and is conclusive as against collateral attack. *Buena Vista Petroleum Co. v. Tulare Oil, etc., Co.*, (1895) 67 Fed. Rep. 226.

List void because of character of land.—The provision that where lands embraced in certified lists are not of the character contemplated by the Act under which the selections were made by the state, the lists shall be null and void, can be made operative only by courts called in due course of law to consider the titles thus created. A succeeding secretary of the interior has no power to reverse the official action of his predecessor in certifying lands under the provisions of this section. (1892) 17 Op. Atty.-Gen. 406. See also *Buena Vista Petroleum Co. v. Tulare Oil, etc., Co.*, (1895) 67 Fed. Rep. 226.

Sec. 2288. [*Transfers by settlers before patent for public purposes.*] Any bona fide settler under the pre-emption, homestead, or other settlement law shall have the right to transfer, by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, canals, reservoirs, or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to his claim. [R. S.]

This section was amended to read as above by the Act of March 3, 1891, ch. 561, sec. 3, 26 Stat. L. 1097. The section originally read as follows:

"SEC. 2288. [*Right of transfer of settlers under homestead or pre-emption laws for certain public purposes.*] Any person who has already settled or hereafter may settle on the public lands, either by pre-emption, or by virtue of the homestead law or any amendments thereto, shall have the right to transfer, by warranty against his own acts, any portion of his pre-emption or homestead for church, cemetery, or school purposes, or for the right of way of railroads across such pre-emption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their pre-emptions or homesteads." Act of March 3, 1873, ch. 266, 17 Stat. L. 602.

This section was a part of chapter 4 (entitled "Pre-emptions") of title 32 of the Revised Statutes. Such chapter, with the exception of certain sections expressly mentioned, was repealed by the Act of March 3, 1891, ch. 561, sec. 4. This section was not excepted, but was amended as above by section 3 of the same Act as above set out. See *supra*, p. 285.

Section applies only to actual occupants.—This section gives a homestead occupant the right to convey to a railroad a right of way across his homestead before his title is perfected, but it can have no application to a case where a person seeking to establish his claim to title under the homestead laws was not a homestead occupant when the railroad company entered and located its road. In such case the railroad is not required to acquire its right of way under the provisions of

this section, if it has complied with the Act of March 3, 1875, 18 Stat. L. 482, as its right under that statute is superior to that of the person claiming under the homestead laws. *Kinion v. Kansas City, etc., R. Co.*, (1893) 118 Mo. 577. But see *supra*, div. XVIII. *Right of Way Over Public Lands*, and notes thereto.

Specific performance of agreement.—An agreement made by a homestead entryman, before the issuance of the patent, to convey to a railway company a right of way through the land entered by him, and also to convey five acres of such land for depot and other railroad purposes whenever he obtains his patent, if it has been acted on by the railway company, will, on the issuance of the patent, be specifically enforced as to the right of way and also as to so much of the five acres specified as was necessary for railroad purposes at the time of the agreement or as would be necessary for such purposes in the immediate future. *St. Louis, etc., R. Co. v. Tapp*, (1897) 64 Ark. 357, *Bunn, C. J., dissenting*.

Grant of private way.—An agreement by a homestead entryman, before he has perfected his title, granting to private persons a private way over the land entered, is doubtless within the equity of this section. *U. S. v. Reed*, (1886) 28 Fed. Rep. 482.

Presumption that alienation was lawful.—When a person claiming adversely to a homestead entryman seeks to establish that the entryman forfeited his entry by conveying a portion of the land entered before issuance of the patent, the complaint must show affirmatively that the land was not conveyed for a purpose authorized by this section. *Hays v. Steiger*, (1888) 76 Cal. 555.

An act to authorize the issue of duplicate agricultural land scrip where the original has been lost or destroyed.

[Act of June 20, 1874, ch. 330, 18 Stat. L. 111.]

[*Loss or destruction of agricultural college land scrip — new certificates.*] That the provisions of the act of Congress of the twenty-third day of June, eighteen hundred and sixty, relating to the reissue of land warrants in certain cases, be, and the same are hereby, extended so as to include the reissue of agricultural-college land scrip lost, cancelled or destroyed without the fault of the owner thereof, under such rules and regulations as the Secretary of the Interior may prescribe. [18 Stat. L. 111.]

The provisions of Act of June 23, 1860, ch. 203, referred to are incorporated into the Revised Statutes as sections 2441, 2442. See *supra*, p. 389.

An act obviating the necessity of issuing patents for certain private land-claims in the State of Missouri, and other purposes.

[Act of June 6, 1874, ch. 223, 18 Stat. L. 62.]

[SEC. 1.] [*Confirmation of titles to lands in Missouri.*] That all of the right, title, and interest of the United States in and to all of the lands in the State of Missouri which have at any time heretofore been confirmed to any person or persons by any act of Congress, or by any officer or officers, or board or boards of commissioners, acting under and by authority of any act of Congress, shall be, and the same are hereby, granted, released, and relinquished by the United States, in fee-simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and as completely, in every respect whatever, as could be done by patents issued therefor according to law. [18 Stat. L. 62.]

Act applies only to persons entitled to patents. — Sections 1 and 2 of this Act must be construed together; and when so construed it will be seen that the Act dispenses with the necessity of issuing patents for the lands referred to in all cases where the persons in interest are entitled by law to patents, but in no other case. *Snyder v. Sickles*, (1878) 98 U. S. 203.

Act does not apply where patent previously issued. — This Act refers only to those cases in which no patents have been issued previously, and does not cover a case where a patent had been issued and received in entire fulfillment of the obligations of the government. *Sweringen v. St. Louis*, (1902) 185 U. S. 38 (dictum).

SEC. 2. [*Existing rights not affected.*] That nothing contained in the first section of this act shall, in any manner, abridge, divest, impair, injure, or prejudice any valid right, title or interest of any person or persons in or to any portion or part of the lands mentioned in said first section; and this act shall in no wise affect any lands or lots heretofore relinquished to the United States. [18 Stat. L. 62.]

SEC. 3. [See *supra*, p. 257.]

An act defining the manner in which certain land-scrip may be assigned and located, or applied by actual settlers, and providing for the issue of patents in the name of the locator or his legal representatives.

[Act of Jan. 28, 1879, ch. 30, 20 Stat. L. 274.]

[SEC. 1.] [*Private land claims in Florida, Louisiana, and Missouri — certificates for, issuance, subdivision, and assignment.*] That whenever, in cases prosecuted under the acts of Congress of June twenty-second, eighteen hundred and sixty, March second, eighteen hundred and sixty-seven, and the first sec-

tion of the act of June tenth, eighteen hundred and seventy-two, providing for the adjustment of private land-claims in the States of Florida, Louisiana and Missouri, the validity of the claim has been, or shall be hereafter, recognized by the Supreme Court of the United States, and the court has decreed that the plaintiff or plaintiffs is or are entitled to enter a certain number of acres upon the public lands of the United States, subject to private entry at one dollar and twenty-five cents per acre, or to receive certificate of location for as much of the land the title to which has been established as has been disposed of by the United States, certificate of location shall be issued by the Commissioner of the General Land Office attested by the seal of said office, to be located as provided for in the sixth section of the aforesaid act of Congress of June twenty-second, eighteen hundred and sixty, or applied according to the provisions of the second section of this act; and said certificate of location or scrip shall be subdivided according to the request of the confirmer or confirmeres, and, as nearly as practicable, in conformity with the legal divisions and subdivisions of the public lands of the United States, and shall be, and are hereby declared to be, assignable by deed or instrument of writing, according to the form and pursuant to regulations prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owners of the scrip, including the right to locate the scrip in his own name. [20 Stat. L. 274.]

SEC. 2. [*Certificates receivable for pre-emption and homestead claims.*] That such scrip shall be received from actual settlers only in payment of pre-emption claims or in commutation of homestead claims, in the same manner and to the same extent as is now authorized by law in the case of military bounty-land warrants. [20 Stat. L. 275.]

SEC. 3. [*Location of certificate, entry, and patent.*] That the register of the proper land-office, upon any such certificate being located, shall issue, in the name of the party making the location, a certificate of entry, upon which, if it shall appear to the satisfaction of the Commissioner of the General Land Office that such certificate has been fairly obtained, according to the true intent and meaning of this act, a patent shall issue, as in other cases, in the name of the locator or his legal representative. [20 Stat. L. 275.]

Extension of section. — See Act of May 20, 1894, ch. 87, *infra*.

SEC. 4. [*Provisions applicable to indemnity certificates under Act of 1858, ch. 81.*] That the provisions of this act respecting the assignment and patenting of scrip and its application to pre-emption and homestead claims shall apply to the indemnity-certificates of location provided for by the act of the second of June, eighteen hundred and fifty-eight, entitled "An act to provide for the location of certain confirmed private land-claims in the State of Missouri, and for other purposes." [20 Stat. L. 275.]

An act supplementary to the Act of Congress approved January twenty-eighth, eighteen hundred and seventy-nine, entitled "An Act defining the manner in which certain land scrip may be assigned and located or applied by actual settlers, and providing for the issue of patents in the name of the locator or his legal representatives."

[Act of May 20, 1894, ch. 87, 28 Stat. L. 84.]

[*Patents for certain land-scrip locations.*] That it shall be lawful for the Commissioner of the General Land Office to cause patents to be issued, as evidence of title, for all valid locations made with land scrip issued pursuant to decrees of the Supreme Court of the United States, which valid locations were

made prior to the approval of the aforesaid Act in the same manner that patents are now issued under the provisions of section three of said Act of January twenty-eighth, eighteen hundred and seventy-nine. [28 Stat. L. 84.]

The Act of Jan. 28, 1879, above mentioned is given *supra*, p. 517.

Lands in California.—The Act of June 19, 1878, ch. 320, 20 Stat. L. 172, authorized "claimants to lands situated in Santa Barbara county, California, known as the Rancho

Las Cruces, who retrain [*sic*] title through the original Mexican grantee of said rancho * * * to present their claim to said lands to the District Court of the United States for the District of California for examination and adjudication."

An Act To quiet title and possession with respect to certain unconfirmed and located private land claims in the State of Louisiana.

[Act of Feb. 10, 1897, ch. 213, 29 Stat. L. 517.]

[SEC. 1.] [*Certain located private land claims in Louisiana confirmed.*] That all the right, title, and interest of the United States in and to the lands situate in the State of Louisiana, known as the located but unconfirmed private land claims therein, aggregating about eighty thousand acres, and specifically described in the list or tabular statement accompanying the report, dated February nineteenth, eighteen hundred and eighty, made by the surveyor-general of Louisiana to the Commissioner of the General Land Office, under a resolution of the United States Senate of December second, eighteen hundred and seventy-nine, and which report and list were communicated to the Senate by the Secretary of the Interior on March eighth, eighteen hundred and eighty, as Senate Executive Document Numbered One hundred and eleven, Forty-sixth Congress, second session, shall be, and the same are hereby, directed to be granted, released, and relinquished by the United States, in fee simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and completely, in every respect whatever, as could be done by patents issued therefor according to law. [29 Stat. L. 517.]

SEC. 2. [*Only United States title relinquished.*] That nothing contained in this Act shall in any manner abridge, divest, impair, injure, or prejudice any valid right, title, or interest of any person or persons in or to any portion or part of the lands mentioned in said first section, the true intent of this Act being to relinquish and abandon, grant, give, and concede any and all right, interest, and estate, in law or equity, which the United States is or is supposed to be entitled to in said lands, in favor of all persons, estates, firms, or corporations who would be the true and lawful owners of the same under the laws of Louisiana, including the laws of prescription, in the absence of the said interest and estate of the United States. [29 Stat. L. 518.]

SEC. 3. [*Patents to issue.*] That the Department of the Interior shall cause patents to issue for such lands, and such patents shall issue in the name of the original claimant as appears in the list or schedule aforesaid, and when issued shall be held to be for the use and benefit of the true and lawful owners as provided in sections one and two of this Act. [29 Stat. L. 518.]

An act prescribing limitations of time for completion of title to certain lands disposed of under the Act of Congress approved September twenty-seventh, eighteen hundred and fifty, and the Acts amendatory and supplemental thereto, and commonly known as the "Donation Act," and for the protection of purchasers and occupants on said lands.

[Act of July 26, 1894, ch. 163, 28 Stat. L. 122.]

[SEC. 1.] [*Oregon donation lands — extension of time for proving claims — patents — bona fide settlers on abandoned claims.*] That in all cases where

persons under the provisions of the Act of Congress entitled "An Act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," approved September twenty-seventh, eighteen hundred and fifty, or the various Acts amendatory and supplemental thereto, have made proof of settlement on tracts of land in either of the States of Oregon, Washington, or Idaho, and given notice, as required by law, that they claimed such lands as donations, but have failed to execute and file in the proper land offices proof of their continued residence on and cultivation of the lands so settled upon and claimed, so as to entitle them to patents therefor, such claimants, their heirs, devisees and grantees shall have, and they are hereby given, until the first day of January, eighteen hundred and ninety-six, the right to make and file final proofs and fully establish their rights to donations of lands under the aforesaid Act of Congress, and no longer; and all claimants who shall fail to make and file final proof and perfect their claims to lands, as donations under the Acts aforesaid, before the said first day of January, eighteen hundred and ninety-six, shall thereafter be held to have abandoned their claims to the lands embraced in their notices: *Provided*, That as soon as practicable after the passage of this Act notices shall be published at least once a week for six successive weeks in one newspaper of general circulation published in the land district, in a form to be prescribed by the Commissioner of the General Land Office, requiring such donation claimants, their heirs, devisees, and grantees, and all persons making claim to such donation claims, to appear and make final proof for such claims within the time herein provided, and that in default of such final proof such donation claims will be held to have been abandoned and the lands embraced therein shall be, and are hereby, restored to the public domain and shall be subject to disposal under the then existing laws providing for the disposition of the public lands: *Provided further*, That where any such donation claims or any part thereof are claimed by descent, devise, judicial sale, grant, or conveyance, in good faith, under the original claimant, and are, at the date of this Act and for twenty years prior thereto have been, in the quiet adverse possession of such heir, devisee, grantee, or purchaser, or those under whom they claim, such heirs, devisees, grantees, or purchasers, upon making proof of their claims and adverse possession as aforesaid, shall be entitled to patents for the land so claimed and occupied by them: *Provided further*, That where any portion of any such abandoned donation claim shall have been settled upon prior to January first, eighteen hundred and ninety-four, by any person under an erroneous claim of right and has been used as a bona fide residence by such settler where final proof shall not be made by the original claimant, or his heirs, devisees or grantees, as aforesaid, and such settler has exhausted his or her homestead right, such settler may, within ninety days from the first day of January, eighteen hundred and ninety-six, file with the register of the land office of the district within which the lands are situate their affidavit and the affidavits of at least two disinterested witnesses establishing the facts of their bona fide settlement, occupancy, and improvement of said lands, and pay to the receiver of the proper land office one dollar and twenty-five cents per acre for the land so settled upon, occupied, and improved, not exceeding one hundred and sixty acres, and shall thereupon receive patent therefor. [28 Stat. L. 122.]

SEC. 2. [*Hearings by Commissioner as to abandonment — expenses.*] That nothing in this Act shall be so construed as to deprive the Commissioner of the General Land Office, under the regulations governing contests in land cases, of his right, if such right now exists, to allow or direct hearings to be instituted

to show that a donation claimant has abandoned the lands described in his notice, or prevent the Commissioner, when it is proven that such a claim is invalid or abandoned, from canceling the same upon the official records and thereafter disposing of the lands as a part of the public domain: *Provided*, That where hearings are allowed contestants shall pay the expenses incident thereto in the same manner that costs are paid in other contested land entries; and this Act shall not be construed to affect any case now pending before the Land Department in which final proof has been furnished. [28 Stat. L. 122.]

SEC. 3. [Regulations.] That the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, shall issue the necessary rules and regulations to give full force and effect to the provisions of this Act. Nothing in this Act contained shall be construed to impair or affect any adverse claims arising under any law of the United States other than said Donation Act, to or in respect of the lands in this Act referred to. [28 Stat. L. 123.]

An Act To confirm certain cash entries of public lands.

[Act of Jan. 30, 1897, ch. 111, 29 Stat. L. 507.]

[SEC. 1.] [Certain entries under Act of Aug. 4, 1854, ch. 244, confirmed.] That all entries of the public lands made under the provisions of the Act entitled "An Act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved August fourth, eighteen hundred and fifty-four, which are illegal and invalid because of the fact that the lands covered thereby had never been offered for sale, be, and the same are hereby, confirmed, if, upon examination by the Commissioner of the General Land Office, the same are found to be otherwise regular and in compliance with said Act and the Acts supplemental thereto. [29 Stat. L. 507.]

"In House Report No. 1526, 54th Cong., 1st sess., the following explanation of the purpose of this Act is given:

"The bill is necessary in order to enable the Commissioner of the General Land Office to pass to patent certain graduation entries which have been suspended as technically invalid because the lands represented in the

purchases had never been offered at public sale. So far as the committee has been informed these entries exist in Arkansas, south of the old Louisiana boundary line and north of the new line authorized by the Act of May 19, 1828, but it is general in its application." *Compilers' note, 2 Supp. R. S. 545.*

SEC. 2. [Repeal.] That all acts or parts of acts in conflict herewith are hereby repealed. [29 Stat. L. 507.]

An Act For relief of occupants of lands included in the Algodones grant, in Arizona.

[Act of Jan. 14, 1901, ch. 12, 31 Stat. L. 729.]

[Algodones grant in Arizona — Preamble.] Whereas the title to the lands in that section of the country in the county of Yuma and the Territory of Arizona, and included within the boundaries of the old Mexican land grant known as the Algodones grant, was tried by the United States Court of Private Land Claims, created for the settlement of titles to such grants, in the years eighteen hundred and ninety-five and eighteen hundred and ninety-six; and

Whereas in the hearing of said contest before said court the alleged grantees under said grant were successful and their title thereto by said trial court confirmed, and immediately thereafter the said alleged grantees, for large and valuable considerations, sold to numbers of people, citizens and bona fide settlers on said lands, in tracts of less than forty acres to each, and said settlers,

then believing that they had a bona fide title to said lands sold, made lasting and valuable improvements and permanent homes thereon; and

Whereas the Government of the United States appealed said cause from the decision of said court below, and on said appeal the said decision of the said court below was reversed, and the title to said grant in said alleged grantees adjudged to be void, and that the said lands included within the boundaries of said grant, and sold as aforesaid, belonged to the United States; and if said settlers, citizens, and occupants of said lands who so purchased the same as aforesaid be not permitted to retain the same, and pay the Government therefor, they will be deprived of their homes, at ruinous consequences to them: Therefore, [31 Stat. L. 729.]

[SEC. 1.] [*Rights of purchasers from claimants.*] That where such persons in good faith and for valuable considerations purchased from the grant claimants prior to May twenty-third, eighteen hundred and ninety-eight, portions of the land covered by the said grant, and have occupied and improved the same, such persons may, within six months from and after the passage of this Act, or within three months after the said lands shall be restored to entry, purchase the same at the price of one dollar and twenty-five cents per acre, upon making proof of the facts required by this Act under regulations to be provided by the Commissioner of the General Land Office and approved by the Secretary of the Interior, joint entries being admissible where two or more persons have purchased lands on the same forty-acre tract: *Provided*, That no one person shall purchase more than forty acres, and no purchase shall be allowed for a less quantity than that contained in the smallest legal subdivision. [31 Stat. L. 730.]

SEC. 2. [*Rights of settlers.*] That where persons duly qualified to make entry under the homestead or desert-land laws have occupied any of said lands with the intention of entering the same under the homestead or desert-land laws, such persons shall be allowed three months from and after the passage of this Act, or after the said lands shall be restored to entry, within which to make their entries, and the fact that such persons have imp[r]oved or reclaimed such desert lands shall be no bar to their making such entries. [31 Stat. L. 730.]

An act for the benefit of occupying claimants.

[Act of June 1, 1874, ch. 200, 18 Stat. L. 50.]

[*Remedies for improvements where occupying claimant's title adjudged invalid.*] That when an occupant of land, having color of title, in good faith has made valuable improvements thereon, and is, in the proper action, found not to be the rightful owner thereof, such occupant shall be entitled in the Federal courts to all the rights and remedies, and, upon instituting the proper proceedings, such relief as may be given or secured to him by the statutes of the State or Territory where the land lies, although the title of the plaintiff in the action may have been granted by the United States after said improvements were so made. [18 Stat. L. 50.]

This Act has no application to land the title of which has not passed from the United States. A homestead filing does not convey "color of title" within the meaning of the

Act; nor can a person whose homestead entry has been canceled for fraud in its inception avail himself of the benefits of the Act. *Woodruff v. Wallace*, (1895) 3 Okla. 355.

Sec. 2450. [*Cases of "suspended entries of public lands" and "suspended pre-emption land-claims."*] The Commissioner of the General Land-Office is

authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be settled by the Secretary of the Interior, the Attorney-General, and the Commissioner, conjointly, consistently with such principles, all cases of suspended entries of public lands and of suspended pre-emption land-claims, and to adjudge in what cases patents shall issue upon the same. [R. S.]

Act of Aug. 3, 1846, ch. 78, 9 Stat. L. 51; Act of March 3, 1853, ch. 152, 10 Stat. L. 258; Act of June 26, 1856, ch. 47, 11 Stat. L. 22.

This and section 2451 following were amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 244 by inserting the words "Secretary of the Interior," in place of the words "Secretary of the Treasury" appearing in the section as originally enacted.

Construction of R. S. 2450-2457 — effect on ordinary jurisdiction of land officers. — The purpose of R. S. 2450-2457 "is, where the law has been substantially complied with, to authorize the confirmation of entries which otherwise the land officers would be compelled to reject because of errors or informalities which, if satisfactorily explained as arising from ignorance, accident, or mistake, would, in the absence of an adverse claim, be excused by the courts, in administering the principles of equity and justice. The purpose of the legislation was not to limit or restrict the general or ordinary jurisdiction of the land officers. It was rather to supplement that jurisdiction by authorizing them to apply the principles of equity, for the purpose of saving from rejection and cancellation a class of entries deemed meritorious by Congress, but which could not be sustained and carried to patent under existing land laws. There was no necessity for legislation authorizing the rejection or cancellation of irregular entries, but legislation was necessary to save such entries from rejection or cancellation when otherwise meritorious. Primarily the decision and adjudication of suspended entries is, under sections 2450 and 2451, as theretofore, left with the commissioner of the general land office, except that he is to be guided by the principles of equity and justice and by the regulations settled by the secretary of the interior, the attorney-general, and the commissioner conjointly. The only question is whether all decisions of the commissioner upon such suspended entries must be submitted to the secretary of the interior and the attorney-general, acting as a board, for approval. If the matter rested upon section 2450 and the first part of section 2451, it might well be contended that a decision rejecting or canceling a suspended entry should, equally with a decision sustaining such an entry, be submitted to the board for approval. But the latter part of section 2451 does not sustain that view. It is there declared that 'every such adjudication,' if approved by the board, 'shall operate only to divest the United States of the title of the lands embraced thereby.' A decision merely rejecting or canceling the entry could not, with or without the approval of the board, have the effect of

divesting the United States of its title. That effect could only flow from a decision sustaining the entry, and since the effect of a decision by the commissioner such as is required to be submitted to the board and of an approval thereof by the board, is to divest the United States of its title, it follows that only decisions sustaining irregular entries are required to be submitted to the board for its approval. Decisions rejecting or canceling such entries have the force and effect otherwise accorded to them by the general land laws, and are subject to the appellate or supervisory authority of the secretary of the interior as in other instances. The reasons for requiring the approval by the secretary of the interior and the attorney-general of decisions of the commissioner sustaining irregular entries, under this exceptional legislation, do not apply to decisions rejecting and canceling such entries. In the one instance claims to public lands are sustained, although acquired in an irregular manner, while in the other such claims are rejected and the public title preserved." *Hawley v. Diller*, (1900) 178 U. S. 477, *affirming* (C. C. A. 1897) 81 Fed. Rep. 651, *reversing* (1896) 15 Fed. Rep. 946. See also *California Redwood Co. v. Little*, (1897) 79 Fed. Rep. 854. *Compare Stimson Land Co. v. Hollister*, (1896) 75 Fed. Rep. 941; *Stimson Land Co. v. Rawson*, (1894) 62 Fed. Rep. 426.

Equitable relief against entryman's ignorance or mistake. — "The provisions of sections 2450-2457 Rev. Stat. U. S., creating a board of equitable adjudication, and vesting it with jurisdiction to decide, upon principles of equity and justice, that a patent may issue, notwithstanding the entryman may not have strictly complied with the terms of the statute, if such failure is shown to have resulted from ignorance, accident, or mistake, is in effect a declaration that, so far as the government is concerned, the equitable claim of the entryman, if established to the satisfaction of that board, shall be sufficient answer to any claim on the part of the government that the statute has not been strictly complied with. * * * In these sections Congress has declared that, if there is no adverse claim to the land, the entryman may set up an equitable defense to a claim by the government, or any one on its behalf, that he has failed to comply with the terms of the statute; and if in the opinion of the commissioner such equitable defense is established and his opinion is approved by this board, a patent for the land shall issue, notwithstanding his failure to comply strictly with the requirements of the statute. The entryman is thus given a right to have his equitable claim adjudicated by the commissioner, and, if determined in his favor,

he has the further right to have his decision submitted to the board of equitable adjudication, as provided in section 2457, and if that board approves the decision he becomes entitled to a patent." *Gage v. Gunther*, (1902) 136 Cal. 338.

Statute does not cover mistakes of law.—This Act is intended to relieve against ignorance or mistake in a matter of fact, and not of law. Every man is conclusively presumed to know the law, and a mistake in the law is not a ground of equitable relief. Hence the statute does not authorize the confirmation of an erroneous or informal entry or location, made in ignorance or mistake of matters of law and not of fact. (1860) 9 Op. Atty-Gen. 511.

Land entered or sold without lawful authority.—This Act applies "only to entries or sales suspended on account of error or informality arising from ignorance, accident, or mistake, and where the law has been substantially complied with, but not to cases where there can be no lawful entry or sale, in consequence of the total absence of lawful authority." (1856) 8 Op. Atty-Gen. 16.

Sale of lands withdrawn from private entry.—Where certain lands were withdrawn from private entry, and thereafter the commissioner of the general land office ordered notice to be given, by advertisement, restoring a portion thereof to private entry, and, pending the advertisement, erroneously instructed the register and receiver that certain other lands were included in such notice, whereupon they were entered and paid for, the attorney-general held that the facts were sufficient to give the board of adjudication of suspended entries jurisdiction of the claim of the entrymen to patents for the land entered by them, and that if, on investigation, the board should find that due publicity had been given to the fact of restoration, it might disregard the forms (though adopted inadvertently) by which that publicity was attained. (1874) 14 Op. Atty-Gen. 636.

In a subsequent opinion the attorney-general doubted whether any notice of restoration was necessary to confer jurisdiction on the board. (1874) 14 Op. Atty-Gen. 645.

Sec. 2451. [*Adjudications under above, how approved.*] Every such adjudication shall be approved by the Secretary of the Interior and the Attorney-General, acting as a board; and shall operate only to divest the United States of the title of the lands embraced thereby, without prejudice to the rights of conflicting claimants. [R. S.]

Act of Aug. 3, 1846, ch. 78, 9 Stat. L. 51. See note under section 2450, *supra*.

This section was amended to read as above given by the Act of Feb. 27, 1877, ch. 69. The amendment consisted in substituting the words "Secretary of the Interior" for "Secretary of the Treasury."

Conclusiveness of adjudications.—As the

board created by this Act is a special tribunal, with full powers to examine and decide the questions submitted to it under the Act, and as there is no provision for an appeal to any other jurisdiction, the adjudications of the board are final within the law. *Foley v. Harrison*, (1853) 15 How. (U. S.) 433.

Sec. 2452. [*Repealed.*]

This section was as follows:

"Sec. 2452. [*Report of adjudications under preceding sections.*] The Commissioner is directed to report to Congress at the first session after any such adjudications have been made a list of the same under the

classes prescribed by law, with a statement of the principles upon which each class was determined." Act of Aug. 3, 1846, ch. 78, 9 Stat. L. 51.

It was directly repealed by the Act of March 2, 1895, ch. 177, sec. 3, *supra*, p. 218.

Sec. 2453. [*Decisions to be arranged into classes.*] The Commissioner shall arrange his decisions into two classes; the first class to embrace all such cases of equity as may be finally confirmed by the board, and the second class to embrace all such cases as the board reject and decide to be invalid. [R. S.]

Act of Aug. 3, 1846, ch. 78, 9 Stat. L. 51.

Sec. 2454. [*Patents to issue for lands in the first class, and lands in second class to revert to the United States.*] For all lands covered by claims which are placed in the first class, patents shall issue to the claimants; and all lands embraced by claims placed in the second class shall ipso facto revert to, and become part of, the public domain. [R. S.]

Act of Aug. 3, 1846, ch. 78, 9 Stat. L. 51.

Sec. 2455. [*Commissioner to order into market lands of second class.*]

It shall be lawful for the Commissioner of the General Land Office to order into market and sell for not less than one dollar and twenty-five cents per acre any isolated or disconnected tract or parcel of the public domain less than one quarter section which in his judgment it would be proper to expose to sale after at least thirty days' notice by the land officers of the district in which such lands may be situated: *Provided*, That lands shall not become so isolated or disconnected until the same have been subject to homestead entry for a period of three years after the surrounding land has been entered, filed upon, or sold by the Government: *Provided*, That not more than one hundred and sixty acres shall be sold to any one person. [R. S.]

This section was amended to read as above by the Act of Feb. 26, 1895, ch. 133, 28 Stat. L. 687.

The section originally read as follows:

"Sec. 2455. It may be lawful for the Commissioner of the General Land-Office to order into market, after due notice, without the formality and expense of a proclamation of the President, all lands of the second class, though heretofore unproclaimed and unof-

fered, and such other isolated or disconnected tracts or parcels of unoffered lands which, in his judgment, it would be proper to expose to sale in like manner. But public notice of at least thirty days shall be given by the land-officers of the district in which such lands may be situated, pursuant to the directions of the Commissioner." Act of Aug. 3, 1846, ch. 78, 9 Stat. L. 51.

Sec. 2456. [*Patents surrendered and new ones issued in certain cases.*]

Where patents have been already issued on entries which are confirmed by the officers who are constituted the board of adjudication, the Commissioner of the General Land-Office, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such confirmation, to the person who made the entry, his heirs or assigns. [R. S.]

Act of March 3, 1853, ch. 152, 10 Stat. L. 258.

Surrender and cancellation of outstanding patent.—In the case of a voidable entry of public land, on which a patent has been issued, when the action of the board of equitable adjudication is invoked with a view of obtaining the issuance of a new patent under the provisions of this section, a surrender of

the outstanding patent should accompany the application or be made before the entry is acted on by the board. The outstanding patent, when surrendered, need not be canceled until after confirmation of the entry; it is sufficient if the cancellation take place prior to the issuance of the new patent. (1888) 19 Op. Atty.-Gen. 188.

Sec. 2457. [*Extent of foregoing provisions.*]

The preceding provisions from section twenty-four hundred and fifty to section twenty-four hundred and fifty-six, inclusive, shall be applicable to all cases of suspended entries and locations, which have arisen in the General Land-Office since the twenty-sixth day of June, eighteen hundred and fifty-six, as well as to all cases of a similar kind which may hereafter occur, embracing as well locations under bounty-land warrants as ordinary entries or sales, including homestead entries and pre-emption locations or cases; where the law has been substantially complied with, and the error or informality arose from ignorance, accident, or mistake which is satisfactorily explained; and where the rights of no other claimant or pre-emptor are prejudiced, or where there is no adverse claim. [R. S.]

Act of June 26, 1856, ch. 47, 11 Stat. L. 22.

SEC. 7. [*Suspension of entry for correction of clerical errors.*] That whenever it shall appear to the Commissioner of the General Land Office that a clerical error has been committed in the entry of any of the public lands such entry may be suspended, upon proper notification to the claimant, through the

local land office, until the error has been corrected; and all entries made under the preemption, homestead, desert-land, or timber-culture laws, in which final proof and payment may have been made and certificates issued, and to which there are no adverse claims originating prior to final entry and which have been sold or incumbered prior to the first day of March, eighteen hundred and eighty-eight, and after final entry, to bona-fide purchasers, or incumbrancers, for a valuable consideration, shall unless upon an investigation by a Government Agent, fraud on the part of the purchaser has been found, be confirmed and patented upon presentation of satisfactory proof to the Land Department of such sale or incumbrance: *Provided*, That after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or pre-emption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him, but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor. [26 Stat. L. 1098.]

This and section 8 following are from the Act of March 3, 1891, ch. 561, "An Act to repeal timber-culture laws, and for other purposes."

Act applies to existing entries only.—The provision for the issuance of patents to *bona fide* purchasers or incumbrancers applies only to entries existing at the time of the passage of the Act and does not apply in a case where the land department canceled the entry before the passage of the Act. *Parsons v. Venzke*, (1896) 164 U. S. 89; *Guaranty Sav. Bank v. Bladow*, (1900) 176 U. S. 448; *Pfund v. Valley L. & T. Co.*, (1897) 52 Neb. 473; *Caldwell v. Bush*, (1896) 6 Wyo. 342.

But where on Feb. 25, 1891, the commissioner of the general land office canceled a pre-emption entry, and on March 26, 1891, the entryman's purchaser applied to the commissioner to have the entry declared confirmed by virtue of this Act on the ground that he was a *bona fide* purchaser of the land within the meaning of the Act, and thereupon the commissioner granted an order suspending the order of cancellation of Feb. 25, 1891, and staying all proceedings thereunder, and subsequently the commissioner after taking proof decided that the purchaser was a *bona fide* purchaser, and declared the entry confirmed by virtue of this

Act, and this decision was confirmed on appeal by the secretary of the interior and a patent was issued pursuant to the decision, it was held that the entry was never canceled, and that the purchaser was entitled to the benefits of this Act. *Graham v. Great Falls Water Power, etc., Co.*, (Mont. 1904) 76 Pac. Rep. 808.

Act protects bona fide purchasers only.—This Act was a remedial statute—a statute of repose. It was intended to protect *bona fide* purchasers only. It extended no clemency or protection to the fraudulent entryman. That Congress intended that the Act should cut off pending contests where the lands were in possession of *bona fide* purchasers is hardly open to question, in view of the language employed. *Graham v. Great Falls Water Power, etc., Co.*, (Mont. 1904) 76 Pac. Rep. 808.

Entry made for benefit of purchaser.—It would seem that a purchaser is not entitled to a patent under the provisions of the second clause of this section, where it is established to the satisfaction of the land office that a desert land entry was made, not for the benefit of the entryman, but for the benefit of such purchaser. *Caldwell v. Bush*, (1896) 6 Wyo. 342.

SEC. 8. [Suits to annul patents—limitation.] That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents. * * * [26 Stat. L. 1099, 26 Stat. L. 1093.]

See note under section 7, *supra*.

The omitted part of the section relates to timber depredations, and is amended by Act of March 3, 1891, ch. 559, 26 Stat. L. 1093, and later Acts. See **TIMBER LANDS AND FOREST RESERVES**. The amendments do not change that part of the section above given.

Partition suit by entryman's heirs.—This section refers only to suits by the United States to vacate and annul patents, and does not apply to a suit brought by the heirs of one who entered public land to partition the land entered. *Holloman v. Bullock*, (1903) 82 Miss. 405.

Secs. 2458–2463. [See TIMBER LANDS AND FOREST RESERVES.]

Secs. 2464–2468. [See div. XVII. *Timber Culture.*]

Sec. 2469. [*Copies of records, etc., to be certified.* See EVIDENCE, vol. 3, p. 41.]

Sec. 2470. [*Exemplifications valid without names of officers signing and countersigning.* See EVIDENCE, vol. 3, p. 41.]

[*Secretary of Interior may negotiate with Indians for cession of lands.*]

That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to negotiate, through any United States Indian inspector, agreements with any Indians for the cession to the United States of portions of their respective reservations or surplus unallotted lands, any agreements thus negotiated to be subject to subsequent ratification by Congress. [31 Stat. L. 1077.]

This is from the Indian Appropriation Act of March 3, 1901, ch. 832.

Sec. 2471. [*The false making, altering, etc., of any instrument in writing, etc., concerning lands, etc., in California, penalty.*] Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited; or willingly aids and assists in the false making, altering, forging, or counterfeiting any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or evidence of right, title, or claim to lands, mines, or minerals in California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, for the purpose of setting up or establishing against the United States any claim, right, or title to lands, mines, or minerals within the State of California, or for the purpose of enabling any person to set up or establish any such claim; and every person, who, for such purpose, utters or publishes as true and genuine any such false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, evidence of right, title, or claim to lands or mines or minerals in the State of California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, shall be punishable by imprisonment at hard labor not less than three years and not more than ten years, and by a fine of not more than ten thousand dollars. [R. S.]

Act of May 18, 1858, ch. 40, 11 Stat. L. 290.

No prior legislation on subject.—There was no Act of Congress which reached a case of altering or forging title papers or the

uttering or publishing of them as true, until the passage of this Act. U. S. v. Reese, (1866, 4 Sawy. (U. S.) 629, 27 Fed. Cas. No. 16,138.

Sec. 2472. [*Falsely dating any evidence of title under Mexican authority, etc., to lands in California, penalty.*] Every person who makes, or causes or procures to be made, or willingly aids and assists in making any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or written evidence of right, title, or claim, under Mexican authority, to any lands, mines, or minerals in the State of California, or any instrument of writing in relation to lands or mines or minerals in the State

of California, having a false date, or falsely purporting to be made by any Mexican officer or authority prior to the seventh day of July, eighteen hundred and forty-six, for the purpose of setting up or establishing any claim against the United States to lands or mines or minerals within the State of California, or of enabling any person to set up or establish any such claim; and every person who signs his name as governor, secretary, or other public officer acting under Mexican authority, to any instrument of writing falsely purporting to be a grant, concession, or denouncement under Mexican authority, and during its existence in California, of lands, mines, or minerals, or falsely purporting to be an informe, report, record, confirmation, or other proceeding on an application for a grant, concession, or denouncement under Mexican authority, during its existence in California, of lands, mines, or minerals, shall be punishable as prescribed in the preceding section. [R. S.]

Act of May 18, 1858, ch. 40, 11 Stat. L. 291.

Sec. 2473. [*Presenting false or counterfeited evidences of title, etc., to lands in California, and prosecuting suits thereon, penalty.*] Every person who, for the purpose of setting up or establishing any claim against the United States to lands, mines, or minerals within the State of California, presents, or causes or procures to be presented, before any court, judge, commission, or commissioner, or other officer of the United States, any false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, minerals, or mines in the State of California, knowing the same to be false, forged, altered, or counterfeited, or any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, mines, or minerals in California, knowing the same to be falsely dated; and every person who prosecutes in any court of the United States, by appeal or otherwise, any claim against the United States for lands, mines, or minerals in California, which claim is founded upon, or evidenced by, any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, counterfeited, or falsely dated, shall be punishable as prescribed in section twenty-four hundred and seventy-one. [R. S.]

Act of May 18, 1858, ch. 40, 11 Stat. L. 291.

Sec. 5411. [*Altering, etc., records in surveyor-general's office in California.*] Every person who, without lawful authority, willfully takes from the archives of the surveyor-general's office in California, any expediente, map, diseño, book, paper, writing, record, document, seal, stamp, or die; or willfully alters, defaces, mutilates, injures, or destroys any expediente, book, paper, map, diseño, instrument of writing, document, record, seal, stamp, or die, deposited in such archives; or conceals or unlawfully withholds from the possession of the surveyor-general, or on demand refuses to deliver to him any expediente, map, diseño, official book, paper, writing, document, archive, record, seal, stamp, or die relating to or used in the administration of government in the department of Upper California, and belonging to the government during the existence of Spanish or Mexican authority in that department; or who willfully alters, defaces, mutilates, makes away with, or destroys any such official book,

expediente, map, diseño, paper, writing, document, archive, record, seal, stamp, or die, shall pay a fine of not more than ten thousand dollars, and be imprisoned for a term not more than ten years. [R. S.]

Act of May 18, 1858, ch. 39, 11 Stat. L. 290.

Sec. 5412. [*Deposit of fraudulent papers in archives.*] Every person who secretly or fraudulently places, or causes to be placed, in or among the archives of the surveyor-general's office in California, any expediente, book, paper, diseño, map, draught, record, or any instrument of writing purporting to be a petition, decree, order, report, concession, grant, confirmation, map, diseño, expediente or part of an expediente, denouncement, title-paper, or evidence of right, title, or claim to any land, mine, or mineral, or any book, writing, paper, or document whatever, shall pay a fine of not more than five thousand dollars, or be imprisoned for a term not more than three years; or be both fined and imprisoned within such limits. [R. S.]

Act of May 18, 1858, ch. 39, 11 Stat. L. 290.

Secs. 2474, 2475. [See PUBLIC PARKS.]

Sec. 2476. [*Navigable rivers.* See RIVERS, HARBORS, AND CANALS.]

Sec. 2477. [See div. XVIII. *Right of Way Over Public Lands.*]

Sec. 2478. [*Power of Commissioner of Land Office to enforce this title.*] The Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this Title not otherwise specially provided for. [R. S.]

Commissioner clothed with large powers.—The commissioner, in the exercise of his superintendence over surveyors-general, and all other subordinate officers of the bureau, is clothed with large powers of control to prevent the consequences of inadvertence, mistakes, irregularity, and fraud in their operations. *Cragin v. Powell*, (1888) 128 U. S. 691. See also *Bell v. Hearne*, (1856) 19 How. (U. S.) 252.

Power to establish a uniform practice is given by this section to the officers of the land department. *Germania Iron Co. v. James*, (C. C. A. 1898) 89 Fed. Rep. 811.

Regulations having force and effect of law.—The rules and regulations adopted by the commissioner of the general land office under this section have all the force and effect of a law of the United States. *Peters v. U. S.*, (1894) 2 Okla. 116.

Judicial notice taken of regulations.—The courts will take judicial notice of the regulations adopted by the commissioner of the several land offices in pursuance of this Act. *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, (1903) 190 U. S. 301; *Caha v. U. S.*, (1894) 152 U. S. 211; *Peters v. U. S.*, (1894) 2 Okla. 116. *Contra*, *U. S. v. Bedgood*, (1391) 49 Fed. Rep. 54.

Regulations must be reasonable and legal.—“Under this section the validity of all departmental regulations which are appropriate, and within the limitations of the law, cannot be doubted. This, however, is not a grant of power to legislate; to add to

the law; to render its enforcement difficult; to burden the proceedings under it with unnecessary expense or hardship; or to encumber them with onerous and technical conditions. It is designed that the permitted regulations shall simplify and explain, not embarrass, the administration of the law; and certainly they must not only be appropriate, but they must be reasonable, and within the limitations and intent of the statute.” *Anchor v. Howe*, (1892) 50 Fed. Rep. 366; *U. S. v. Murphy*, (1887) 32 Fed. Rep. 376; *Cosmos Exploration Co. v. Gray Eagle Oil Co.*, (1900) 104 Fed. Rep. 43, *affirmed* (C. C. A. 1901) 112 Fed. Rep. 4; *U. S. v. Chaplin*, (1887) 31 Fed. Rep. 890.

Authority of commissioner over entries and patents.—Until the issuance of a patent for an entry under the pre-emption laws of the United States, the commissioner of the general land office may suspend the entry, and order a re-examination as to the pre-emption claimant's residence upon and improvement of the land for which he holds the final receipt of the register and receiver, and if, on said re-examination, it is shown that the claimant has not complied with the law, the commissioner of the general land office has power to cancel the entry. *Pierce v. Frace*, (1891) 2 Wash. 81.

Liberal construction given to authority and supervisory powers of land department officers.—“In the determination of jurisdiction and authority, not only the Acts themselves, but subsequent enactments of Congress con-

ferring supervisory powers and authority on the different officers of the land department, must be considered, to the end that a harmonious system may be established; and, to establish harmony in the administration of the land laws, it becomes necessary to construe liberally the Acts granting supervisory powers to the head of the land department; and the courts of the United States and of the different states of the Union have recognized this necessity, and have uniformly sought to aid, instead of hamper, the department in the administration of the law." *Lawrence v. Potter*, (1900) 22 Wash. 32.

The phrase "under the direction of the secretary of the interior," used in the statute, "is not meaningless, but was intended as an expression in general terms of the power of the secretary to supervise and control the extensive operations of the land department of which he is the head. It means that in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents thereon, and the administration of the trusts devolving upon the government by reason of the laws of Congress or under treaty stipulations, respecting the public domain, the secretary of the interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States." Such supervision may be exercised by direct orders or by review on appeals. The mode in which the supervision shall be exercised, in the absence of statutory directions, may be prescribed by such rules and regulations as the secretary may adopt. *Knight v. U. S. Land Assoc.*, (1891) 142 U. S. 161; *Warner Valley Stock Co. v. Smith*, (1897) 165 U. S. 28; *Orchard v. Alexander*, (1895) 157 U. S. 372; *Stoneroad v. Stoneroad*, (1895) 158 U. S. 240; *Altschul v. Clark*, (1901) 39 Oregon 315; *In re Pueblo City*, 5 Land Dec. Dept. Int. 494. See also *Hestres v. Brennan*, (1875) 50 Cal. 211.

Illustration.—"For example, if, when a patent is about to issue, the secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the attorney-general to institute proceedings for its annulment, it would hardly be seriously contended that the secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated which it would be immediately his duty to ask the attorney-general to take measures to annul. It would not be a sufficient answer against the exercise of his power that no appeal had been taken to him, and, therefore, he was without authority in the matter." *Orchard v. Alexander*, (1895) 157 U. S. 372; *Knight v. U. S. Land Assoc.*, (1891) 142 U. S. 161.

Control supervisory rather than appellate.—Both the secretary of the interior and the commissioner of the general land office, in revising the acts of the subordinate officials of the land department, exercise supervisory

rather than appellate power in the sense in which the term "appellate" is employed in defining the powers of courts of justice. If, however, this power is to be regarded as appellate power in a legal sense, it will be observed that the statute has not provided the machinery for the taking of an appeal, and consequently that matter is subject to such rules and regulations as the department may prescribe; and if the commissioner of the general land office transmits the papers to the secretary of the interior, the presumption is that they were regularly and properly transmitted. *Hestres v. Brennan*, (1875) 50 Cal. 211.

Review of commissioner's decisions.—A decision of the commissioner sustaining an entry, which decision is not rendered in pursuance of his special authority conferred by sections 2450-2457 of the Revised Statutes, but by virtue of his general authority given him by this and other sections, is not required to be submitted to the secretary of the interior and the attorney-general, acting as a board, for appraisal, but was subject to the appellate or supervisory authority of the secretary of the interior. *Hawley v. Diller*, (1900) 178 U. S. 476.

Approval of secretary of interior essential to passing of title.—The title to the lands selected under the grant to Oregon to aid in the construction of a military wagon road (14 Stat. L. 89, ch. 174), and the statute providing for the issuance of patents for such lands to the state or its grantee (13 Stat. L. 80, ch. 305), did not pass from the government until the selection was approved by the secretary of the interior, nor did the statute of limitations begin to run against the state or its grantee until the official approval of the selection by the secretary of the interior. *Altschul v. Clark*, (1901) 39 Oregon 315.

Regulations respecting swamp lands.—The regulations of June 30 and Sept. 1, 1880, by which the land department of the United States, in conjunction with the state, undertook, by means of agents in the field, to examine the character of the lands claimed by the state under the swamp-land grant thereto, superseded the regulation of March 13, 1875; and thereafter no affidavit could be legally used before the commissioner or secretary of the interior on the consideration of the question whether such lands were swamp or not, other than the affidavits of the agents employed to make such examination in the field, and, therefore, the affidavits alleged in the indictment to have been forged by the defendant could not have been legally used to defraud the United States. *U. S. v. Barnhart*, (1887) 33 Fed. Rep. 459.

Stratton surveys of San Francisco pueblo lands set aside.—The secretary of the interior had ample power to set aside the Stratton surveys of the San Francisco pueblo lands, although approved by the surveyor-general of California and confirmed by the commissioner of the general land office, with no appeal taken, and to order a new survey; and his action in that respect cannot be attacked collaterally. *Knight v. U. S. Land Assoc.*, (1891) 142 U. S. 161.

Secs. 2479-2484. [See *supra*, p. 399, div. XII. *Swamp and Overflowed Lands.*]

Sec. 2485. [*Certain lands selected by California confirmed to that State.*] All selections of any portion of the public domain, to which no homestead, pre-emption or other right had been acquired by any settler under the laws of the United States, and not being mineral land, nor reserved for naval, military or Indian purposes nor held or claimed under any valid Mexican or Spanish grant, and not included within the limits of any city, town or village or of the county of San Francisco, made prior to the twenty-third day of July, one thousand eight hundred and sixty-six, and theretofore sold to bona-fide purchasers by the State of California are confirmed to the State of California: *Provided, however,* That said State shall not receive any greater quantity of land for school or improvement purposes than she is entitled to by law. [R. S.]

Act of July 23, 1866, ch. 219, 14 Stat. L. 218.

This section modified by succeeding section.—The provisions of this section are modified by those of R. S. 2480, and the two sections must be read in connection with each other. Hence, the lands confirmed by this section are those selected from lands previously surveyed by authority of the United States, and of which selection notification had been or should thereafter be given to the register of the local land office. *McNee v. Donahue*, (1892) 142 U. S. 587.

Confirmation inures to state's grantees ex proprio vigore.—The confirmation of the state's title by this Act inured immediately to the benefit of its grantees, without any further action by the land department or by the state. *McNee v. Donahue*, (1892) 142 U. S. 587.

Certification prerequisite to confirmation.—Under this Act selections theretofore made by the state and disposed of in good faith under the laws of the state were not confirmed, nor did the title pass, until the lands were certified over to the state by the commissioner of the general land office. Hence, where the President of the United States in 1866 and 1867 reserved for lighthouse purposes a piece of land in California which had been previously selected by the authorities of that state under the 12th section of the Act of March 3, 1853, and by them granted to a private person in accordance with the laws of the state, but the selection had never received the approval of the secretary of the interior and the land had never been certified over to the state by the commissioner of the general land office, it was held that the legal title to the premises was still in the United States. (1872) 14 Op. Atty.-Gen. 50.

Lands not definitely located by railroad not excepted.—The Act on which this section is based made no exception of lands which at the date of its passage were withdrawn from pre-emption, private entry, and sale, pursuant to the filing of the map of its general route by a railroad to which Congress had made a land grant in aid of its construction. Hence, where a railroad filed its map of general route prior to the passage of the Act, but did not file its map of definite location until

after the Act was passed, it was held that the Act operated to confirm the title of a *bona fide* purchaser from the state of California of land included within the limits of the general route, and that the title so confirmed was not affected by the subsequent definite location of the line of the railroad, as the railroad accepted the grant subject to the possibility that Congress might, in its discretion, and prior to the definite location of the railroad's line, sell, reserve, or dispose of enumerated sections for purposes other than those originally contemplated. *Menotti v. Dillon*, (1897) 167 U. S. 703.

Land "claimed" under valid Mexican grant.—This section excepts from confirmation lands "held or claimed" under any valid Mexican grant. Hence it does not confirm the state's title to a selection of land claimed under a Mexican grant, if the grant is subsequently held valid in a proper judicial proceeding, though on final survey it is discovered that the particular land in controversy is without the limits of such Mexican grant. Such land is restored to the public domain, and though a claimant under the state has the right to make a pre-emption entry thereof, a third person may acquire a superior right by making a prior pre-emption entry. *Aurrecoechea v. Bangs*, (1885) 114 U. S. 381.

But the Act operates to confirm the state's selection made after it had been determined in a proper proceeding that the land claimed under the Mexican grant was not in fact within its limits. *Huff v. Doyle*, (1876) 93 U. S. 558. See also *Pratt v. Crane*, (1881) 58 Cal. 533.

Title to "lieu lands" confirmed.—By the operation of this section as modified by R. S. 2486, the lieu lands selected in place of school sections covered by Mexican grants, after the survey of the townships, were confirmed, and the title of the state thereto was perfected, from the date of the Act of March 3, 1853, granting the right to select such lieu lands. *McNee v. Donahue*, (1892) 142 U. S. 587.

But "the lieu lands confirmed to the state were such as had not only been selected by the state, but had also been sold by the state to purchasers, in good faith, under the laws of the state. It became necessary for the

defendant to prove that fact — that the lands had been sold by the state to a purchaser in good faith prior to the passage of the Act of Congress." *Laughlin v. McGarvey*, (1875) 50 Cal. 169.

Coal land is "mineral land" within the meaning of this section. *Mullan v. U. S.*, (1886) 118 U. S. 271.

Confirmation of portion of selection. — Where a selection was made in 1861 in accordance with the laws of the state of California then in force, and the register of the land office was in the same year notified of such selection, but before the passage of this Act the amount of land included in the selection was reduced below one hundred and sixty acres by reason of a grant to a railroad and of the allotment of certain other portions of the land to pre-emption claimants, it was held that this section and R. S. 2486 operated to confirm to the state the title to such portion of the original selection as was not included in the railroad grant or the pre-emption allotments. *Mastick v. Cave*, (1877) 52 Cal. 67.

Confirmation of invalid location does not affect valid location. — While this Act confirms certain invalid locations, it cannot so operate as to confirm an invalid location as against a subsequent valid location made prior to the passage of the Act. *People v. Jackson*, (1881) 62 Cal. 548.

Decision by land department as to validity of selection. — Under this Act it was for the land department to determine, first, whether

the state had selected the land in controversy in part satisfaction of any grant made to the state by any Act of Congress; second, whether the state had disposed of the land to a purchaser in good faith under her laws; third, whether the land was within any of the exceptions by which lands were reserved from the validating effect of the Act; fourth, whether the defendant had proved up his claim before the register and receiver in the manner and within the time required by the Act. The decision of the land department on these questions in favor of an applicant claiming as a purchaser from the state, and the certification of the lands claimed, to the state, for the benefit of the purchaser, before the intervention of the rights of third persons, are conclusive as against the United States and third persons who subsequently attempt to acquire title from the state. *Wilkinson v. Merrill*, (1877) 52 Cal. 424.

The State courts have jurisdiction of actions concerning the rights of conflicting claimants under the state. Congress contented itself with confirmation of the state's title and left all who claimed under that title to their remedies in the courts or other tribunals provided by law for that purpose. *Hastings v. Jackson*, (1884) 112 U. S. 233.

This section does not refer to lands claimed as swamp and overflowed. — *Wright v. Roseberry*, (1887) 121 U. S. 488; *Kile v. Tubbs*, (1881) 59 Cal. 191; *Sutton v. Fassett*, (1875) 51 Cal. 12.

Sec. 2486. [*Where selections are on lands already surveyed.*] When selections named in the foregoing section have been made upon lands already surveyed by authority of the United States, the authorities of said States, where the same has not been already done, shall notify the register of the land-office, for the district in which the land is situated, which notice shall be regarded as the date of the State selection; and the said registers of the several land-offices, after investigation and decision, shall, under the instruction of the Commissioner of the General Land-Office, forward all such selections to the General Land-Office, and the Commissioner of the General Land-Office shall certify the same over to the State in the usual manner. [*R. S.*]

Act of July 23, 1866, ch. 219, 14 Stat. L. 219.

Sec. 2487. [*Where selections are upon land surveyed only by State authority.*] When the State of California has made such selections from the lands not surveyed by the authority of the United States, but which selections have been surveyed by the authority of said State, and the land sold to purchasers in good faith, under the laws of the State, such selections, from said twenty-third of July, eighteen hundred and sixty-six, when marked off and designated in the field, shall have the same force and effect as the pre-emption rights of a settler upon unsurveyed public lands; and if upon a survey of such lands by the United States, the lines of the two surveys shall be found not to agree, the selection shall be so changed as to include those legal subdivisions which nearest conform to the identical land included in the State survey and selection. Upon filing with the register of the proper United States land-office of the township plat, in which any such selection of unsurveyed land is located, the holder of the State title shall be allowed the same time to present and prove up his purchase

and claim as is allowed pre-emptors under existing laws — and if found in accordance with the law the land embraced therein shall be certified over to the State by the Commissioner of the General Land-Office. [R. S.]

Act of July 23, 1866, ch. 219, 14 Stat. L. 219.

Secs. 2488–2490. [See *supra*, p. 399, div. XII. *Swamp and Overflowed Lands.*]

An act to prevent unlawful occupancy of the public lands.

[Act of Feb. 25, 1885, ch. 149, 23 Stat. L. 321.]

[SEC. 1.] [*Inclosure of or assertion of right to public lands without title unlawful.*] That all inclosures of any public lands in any State or Territory of the United States, heretofore or to be hereafter made, erected, or constructed by any person, party, association, or corporation, to any of which land included within the inclosure the person, party, association, or corporation making or controlling the inclosure had no claim or color of title made or acquired in good faith, or an asserted right thereto by or under claim, made in good faith with a view to entry thereof at the proper land-office under the general laws of the United States at the time any such inclosure was or shall be made, are hereby declared to be unlawful, and the maintenance, erection, construction, or control of any such inclosure is hereby forbidden and prohibited; and the assertion of a right to the exclusive use and occupancy of any part of the public lands of the United States in any State or any of the Territories of the United States, without claim, color of title, or asserted right as above specified as to inclosure, is likewise declared unlawful, and hereby prohibited. [23 Stat. L. 321.]

Act constitutional.—It was within the constitutional power of Congress to pass this law. It is not invalid as invading the right of private property. *Camfield v. U. S.*, (1897) 167 U. S. 518, *affirming* (C. C. A. 1895) 66 Fed. Rep. 101.

Purpose of statute.—This Act “was passed in view of a practice which had become common in the western territories of inclosing large areas of lands of the United States by associations of cattle raisers, who were mere trespassers, without shadow of title to such lands, and surrounding them by barbed wire fences, by which persons desiring to become settlers upon such lands were driven or frightened away, in some cases by threats or violence. The law was, however, never intended to operate upon persons who had taken possession under a *bona fide* claim or color of title; nor was it intended that, in a proceeding to abate a fence erected in good faith, the legal validity of the defendant's title to the land should be put in issue.” *Cameron v. U. S.*, (1893) 148 U. S. 301. See also *U. S. v. Cleveland, etc.*, *Cattle Co.*, (1888) 33 Fed. Rep. 323.

Control of government within limits of state.—The United States has the same rights as an ordinary proprietor to maintain its possession of its own lands within the limits of a state and may pass suitable legislation for their protection, although such legislation may involve the exercise of the police power. It may properly take action to prevent the acts of individuals in fencing its lands, even though the fencing was done

for the purpose of irrigation and pasturing. *Camfield v. U. S.*, (1897) 167 U. S. 518.

Two things are forbidden by this Act: “(1) The inclosure referred to; and (2) the assertion of a right to the exclusive use of public land without right or color of right. The actual use, as distinguished from the assertion of the right to use, is not forbidden. In a civil proceeding for the violation of this Act there is no penalty prescribed, either for the use or for the assertion of the right to use. The only judgment which can, under this Act, be rendered in a civil suit, is for the destruction of the fence and an injunction against its rebuilding.” *U. S. v. Douglas-Willan-Sartoris Co.*, (1889) 3 Wyo. 288.

Statute general in terms and without exceptions.—This statute is general in its terms and it contains no exceptions. Where the defendants had caused an inclosure to be made which embraced within its limits more than two hundred thousand acres of the public domain their acts are within the inhibitions of the law, and the defendants cannot justify the erection of the fences in question on the ground that they own all the odd-numbered sections in two specified townships, and that they were engaged in building two large reservoirs for the purpose of irrigating the land owned by them and much other land in that vicinity. *Camfield v. U. S.*, (C. C. A. 1895) 66 Fed. Rep. 101, *affirmed* (1897) 167 U. S. 518.

Inclosure erected in good faith.—An inclosure erected by the owner of the land in good faith for the purpose of inclosing his

own land is not in violation of the Act, although in connecting the fence with that of other landowners he has cut off the government land from access to the country road. *Potts v. U. S.*, (C. C. A. 1902) 114 Fed. Rep. 52. See also *Cameron v. U. S.*, (1893) 148 U. S. 301.

The inclosure and occupancy of lands in an odd-numbered section, and within the limits of a grant to a railroad company, where the entry was made after the same had been withdrawn from sale or entry, and before completion of the railroad, or any declaration of forfeiture of the grant, by a person who, in good faith, intended to acquire title to it by purchase from the railroad company, is not made unlawful by this Act. *U. S. v. Osborn*, (1890) 44 Fed. Rep. 29. See also *U. S. v. Brandestein*, (1887) 32 Fed. Rep. 738.

Fence entirely on owner's land.—The fact that the alleged unlawful inclosure stands entirely upon the land of the owner is no defense to the prosecution, where such fence inclosed a portion of the public land of the United States so as to exclude the public from free access thereto. *U. S. v. Buford*, (1892) 8 Utah 173, *dismissed* (1893) 154 U. S. 496.

But in *U. S. v. Douglas-Willan-Sartoris Co.*, (1889) 3 Wyo. 287, it was held that this statute, in so far as it authorizes the destruction of a fence located entirely on the locator's land, is unconstitutional and void, and that the Act, although apparently prohibiting such a fence under some circumstances, was not intended to do so.

After a section of land has passed to the state under a grant to the state for the support of common schools, the inclosure maintained thereon is no longer unlawful under the Act of Feb. 25, 1885, because the lands are not then "public," and the statute applies only to "public lands." Hence a bill under the Act for the removal of such inclosure will be dismissed. *U. S. v. Elliott*, (1896) 74 Fed. Rep. 92.

Impounding cattle turned into unlawful inclosure.—Persons who have constructed an inclosure which is prohibited by this section have no right to impound cattle which have been turned into such inclosure by the owners. *Taylor v. Buford*, (1892) 8 Utah 113, *dismissed* (1893) 154 U. S. 496.

Sufficiency of occupancy and adverse possession.—The fact that a party has pastured public lands of the United States without a claim of title, or connecting himself therewith under any of the possessory acts, will not give a legal or equitable right to the pasture grown thereon. Such an occupancy is within the meaning of this statute providing that the assertion of a right to the exclusive use and occupancy of any part of the public lands of the United States without claim, color of title, or asserted right, is unlawful and prohibited. *McGinnis v. Friedman*, (1888) 2 Idaho 393.

Color of title.—One who has been in possession of lands under sanction of a judicial decree for twenty-five years has a claim made in good faith and under color of title, and is entitled to recover in ejectment against tres-

passers. *Los Angeles Farming, etc., Co. v. Hoff*, (Cal. 1893) 34 Pac. Rep. 518, *following Cameron v. U. S.*, (1893) 148 U. S. 301.

Entry upon claimed lands not authorized.—This statute by forbidding the fencing of public lands does not authorize an entry upon inclosed and improved land. *Tidwell v. Chiricahua Cattle Co.*, (Ariz. 1898) 53 Pac. Rep. 192; *Laurendeau v. Tugelli*, (1889) 1 Wash. 559; *Laurendeau v. Tugelli*, (1893) 5 Wash. 632.

Homestead entry notwithstanding unlawful inclosure.—A person who has shown no capacity in himself to acquire the government title to the lands, nor any effort or intention to do so, stands in the position of a mere trespasser upon the public domain, and cannot, by an inclosure erected and maintained contrary to the provision of this Act, prevent a homestead entry of land by a citizen of the United States who goes peaceably upon a portion of the tract and in other respects complies with the law. *Kitts v. Austin*, (1890) 83 Cal. 167; *Haven v. Haws*, (1883) 63 Cal. 514; *Whittaker v. Pendola*, (1889) 78 Cal. 296. See also *Caldwell v. Bush*, (1896) 6 Wyo. 342.

That inclosure is unlawful, good defense to suit for pasturage.—In a suit to recover compensation for the pasturage of cattle under a contract which is alleged by the plaintiffs to provide for the defendant's turning his cattle into the one hundred and seventy-five thousand acre pasture of the plaintiffs, to be kept and cared for, and held by the plaintiffs therein, and which pasture, it is alleged, is inclosed by a post and wire fence, paragraphs of the answer which state that this inclosure is maintained upon government land, to which the plaintiffs have no right or title, and which allege that they are holding exclusive possession of such land for rental and speculation, to the exclusion of the defendant and other persons, thereby requiring the defendant to pay for the use thereof, and that the plaintiff's said pasture is an unlawful inclosure of public lands, in violation of the provisions of the Act of Congress of Feb. 25, 1885, state a good defense, and it is error to sustain a demurrer thereto. *Garst v. Love*, (1898) 7 Okla. 666.

No beneficial possession prior to survey.—It seems that an occupant is excluded by this Act from the beneficial use and enjoyment of unsurveyed lands, because prior to the survey it is all a part of the public domain. *State v. Central Pac. R. Co.*, (1890) 21 Nev. 94.

A criminal intent in erecting an inclosure made unlawful by this statute is unnecessary. It is only necessary, in order to complete the crime, that the act which the law declares to be a crime shall have been intentionally done. *U. S. v. Buford*, (1892) 8 Utah 173, *dismissed* (1893) 154 U. S. 496.

Indictment in language of statute.—An indictment is fatally defective which does not charge that at the time the alleged unlawful inclosure was made or erected the defendants and other persons who constructed the same had no claim or color of title to any of the public lands inclosed, "made or acquired in good faith, or an asserted right

thereto by or under claim, made in good faith, with a view to entry thereof at the proper land office under the general laws of the United States." U. S. v. Churchill, (1900) 101 Fed. Rep. 443.

Indictment must negative exceptions permitting inclosure.—Where a statute declares an act done in the absence of certain circumstances to be a crime, an indictment charging

the commission of such a crime must negative the existence of such circumstances, and so an indictment under this Act for unlawfully inclosing a portion of the public lands must show that the defendant is not within any of the exceptions permitting such inclosure. U. S. v. Felderward, (1888) 36 Fed. Rep. 490. *Contra*, U. S. v. Cook, (1888) 36 Fed. Rep. 896.

SEC. 2. [*Suits for violation of preceding section — jurisdiction and procedure.*] That it shall be the duty of the district attorney of the United States for the proper district, on affidavit filed with him by any citizen of the United States that section one of this act is being violated showing a description of the land inclosed with reasonable certainty, not necessarily by metes and bounds nor by Governmental sub-divisions of surveyed lands, but only so that the inclosure may be identified, and the persons guilty of the violation as nearly as may be, and by description, if the name cannot on reasonable inquiry be ascertained, to institute a civil suit in the proper United States district or circuit court, or territorial district court, in the name of the United States, and against the parties named or described who shall be in charge of or controlling the inclosure complained of as defendants; and jurisdiction is also hereby conferred on any United States district or circuit court or territorial district court having jurisdiction over the locality where the land inclosed, or any part thereof, shall be situated, to hear and determine proceedings in equity, by writ of injunction, to restrain violations of the provisions of this act; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure; and any suit brought under the provisions of this section shall have precedence for hearing and trial over other cases on the civil docket of the court, and shall be tried and determined at the earliest practicable day. In any case if the inclosure shall be found to be unlawful, the court shall make the proper order, judgment, or decree for the destruction of the inclosure, in a summary way, unless the inclosure shall be removed by the defendant within five days after the order of the court. [23 Stat. L. 321.]

Appellate jurisdiction of decree for removal of fences.—The Supreme Court of the United States has no jurisdiction of an appeal from a decree rendered by a United States court, or the Supreme Court of a territory, directing the removal of a fence and inclosure, and in default of such removal decreeing that the fence shall be destroyed by the marshal of the district. The allegation supported by affidavits that the value of the property is more than five thousand dollars does not bring the case within the jurisdiction of the Supreme Court. Cameron v. U. S., (1892) 146 U. S. 533; Abadie v. U. S., (1893) 149 U. S. 261.

Admissibility in evidence of copy of lost record.—In an action under this statute, a book prepared under the direction of the commissioner of the general land office as a substitute for an original tract book destroyed by fire, and which was transmitted by him in the regular course of his official duty to the register and receiver of the local land office for use in disposing of public lands in that district, is *prima facie* evidence that the lands therein shown to be public were in fact such, and it was not necessary to attach to the book a certificate of its cor-

rectness in order to justify its use by the officers of the local land office, and to make it admissible in evidence as an official book. Jesse D. Carr Land, etc., Co. v. U. S., (C. C. A. 1902) 118 Fed. Rep. 821.

Findings of lower court on questions of fact.—Where on appeal from a decree of the Circuit Court of Oregon that a portion of a fence used in making an inclosure situate in California shall be destroyed, the plaintiff insists that the evidence shows that the fence described in the bill formed, in connection with a division fence not referred to therein, two separate inclosures, one of which is wholly within the state of California, the question whether the land described in the bill was so fenced as to constitute two separate inclosures, or only one general inclosure, which, for the convenience of the plaintiff in separating stock, was divided by a fence having gates and openings therein, is one of fact, and the Circuit Court of Appeals cannot say from the evidence appearing in the record that the court below erred in finding that there was only one inclosure which included all the land described in the bill. Jesse D. Carr Land, etc., Co. v. U. S., (C. C. A. 1902) 118 Fed. Rep. 821.

SEC. 3. [*Obstruction of settlements on, and transit over, public lands.*] That no person, by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means, shall prevent or obstruct, or shall combine and confederate with others to prevent or obstruct, any person from peaceably entering upon or establishing a settlement or residence on any tract of public land subject to settlement or entry under the public land laws of the United States, or shall prevent or obstruct free passage or transit over or through the public lands: *Provided*, This section shall not be held to affect the right or title of persons, who have gone upon, improved or occupied said lands under the land laws of the United States, claiming title thereto, in good faith. [23 Stat. L. 322.]

Policy of government to keep lands open. — "The policy of the government has been from the first to hold the unappropriated public lands as a great free common for all the settlers of the country where they lie, and for the exclusive use of no one." *Taylor v. Buford*, (1892) 8 Utah 113, *dismissed* (1893) 154 U. S. 496.

Sufficiency of indictment. — A count in an indictment for the offense described in this section which fails to state any of the acts which constitute the conspiracy, and does not describe the lands of which the defendant is alleged to have prevented an entry, nor state that they were public lands, is clearly

bad; but a count which sets out fully all the acts which the defendants conspired to do to prevent the complainant, a citizen of the United States, from free exercise and enjoyment of a certain right and privilege secured to him by the laws of the United States, to wit, the right to then and there peaceably enter upon, prospect for minerals, initiate, locate, and establish and protect a mining claim upon the public lands of the United States under the public land laws of the United States — describing the land and charging that it was public land of the United States — is sufficient. *Haynes v. U. S.*, (C. C. A. 1900) 101 Fed. Rep. 817.

SEC. 4. [*Violators of act, how punished.*] That any person violating any of the provisions hereof, whether as owner, part owner, agent, or who shall aid, abet, counsel, advise, or assist in any violation hereof, shall be deemed guilty of a misdemeanor, and fined in a sum not exceeding one thousand dollars and be imprisoned not exceeding one year for each offense. [23 Stat. L. 322.]

SEC. 5. [*Removal of unlawful structures.*] That the President is hereby authorized to take such measures as shall be necessary to remove and destroy any unlawful inclosure of any of said lands, and to employ civil or military force as may be necessary for that purpose. [23 Stat. L. 322.]

SEC. 6. [*Authority for bringing suits.*] That where the alleged unlawful inclosure includes less than one hundred and sixty acres of land, no suit shall be brought under the provisions of this act without authority from the Secretary of the Interior. [23 Stat. L. 322.]

SEC. 7. [*Pending suits.*] That nothing herein shall affect any pending suits to work their discontinuance, but as to them hereafter they shall be prosecuted and determined under the provisions of this act. [23 Stat. L. 322.]

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Sec. 3591. [*The Treasury of the United States.*] The rooms provided in the Treasury building at the seat of Government for the use of the Treasurer of the United States, his assistants, and clerks, and occupied by them, and the fire-proof vaults and safes erected therein for the keeping of the public moneys in the possession and under the immediate control of the Treasurer, and such other apartments as are provided as places of deposit of the public money, shall be the Treasury of the United States. [*R. S.*]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 59.
 Sections 3591-3659 constitute title 40 of the Revised Statutes, entitled "The Public Moneys."

What constitutes U. S. treasury.—The United States treasury proper, as constituted by what is commonly known as the "Independent Treasury Act," first passed July 4, 1840 (5 Stat. L. 385), repealed Aug. 13, 1841, and again re-enacted with additional provisions Aug. 6, 1846 (9 Stat. L. 59, ch. 90), is a depository of public money where the actual money of the government—gold, silver, bullion, notes, and currency—is kept in kind as received from the public revenues, or deposited there by express authority of law, and where it remains the specific property of the government and cannot be intermingled with other funds, as the treasurer is not authorized to permit other money to be deposited therein except in special cases

expressly provided for by statute. And the "sub-treasuries," commonly so called, under the charge of assistant treasurers, where the public money is received and kept under like relations, as well as the mints and perhaps other like places of deposit, may, in a general sense, be considered as part of the United States treasury. *Branch's Case*, (1876) 12 Ct. Cl. 281.

Duties of secretary.—In this department the secretary represents the government. His acts and his omissions, within the line of his official duties, are the acts or omissions of the government itself; and in all commercial transactions his official negligence will be deemed to be the negligence of the government. He is specially charged with the duty of retiring these treasury notes by exchange, payment, or purchase; and he is the only agent authorized to act for the government in that behalf. All who deal with

the government with respect to these notes are presumed to know his exclusive authority; for it is a public law. Until such time, therefore, as he has acted, or in due course of business ought to have acted, there can have been no such laches as will charge the government. He is presumed to act officially only in his department. His attention can only be demanded after the presentation of

the notes at that place. It was there that the accounts and records of the issues and redemptions under the early laws were by statute required to be kept, and that is the appropriate place for keeping such similar records as the secretary of the treasury may by regulation prescribe, under the later laws, to protect against fraud and loss. *Cooke v. U. S.*, (1875) 91 U. S. 389.

Sec. 3592. [*Certain mints and assay offices to be depositories.*] The mints at Carson City, and at Denver, and the assay-office at Boisé City, shall be places of deposit for such public moneys as the Secretary of the Treasury may direct. [R. S.]

Act of April 21, 1862, ch. 59, 12 Stat. L. 383; Act of March 3, 1863, ch. 96, 12 Stat. L. 770; Act of Feb. 19, 1869, ch. 33, 15 Stat.

L. 271; Act of Feb. 12, 1873, ch. 131, 17 Stat. L. 435.

As to mints and assay offices, see COINAGE, MINTS, AND ASSAY OFFICES, vol. 2, p. 105.

An Act To provide better facilities for the safe-keeping and disbursement of public moneys in the Philippine Islands and in the islands of Cuba and Porto Rico.

[Act of June 6, 1900, ch. 797, 31 Stat. L. 658.]

[*Depositories in Cuba, Porto Rico and Philippine Islands.*] That the Secretary of the Treasury is hereby authorized to designate one or more banks or bankers in the Philippine Islands and in the islands of Cuba and Porto Rico in which public moneys may be deposited: *Provided*, That the banks or bankers thus designated shall give satisfactory security for the safe-keeping and prompt payment of the public moneys so deposited by depositing in the Treasury, United States bonds to an amount not less than the aggregate sum at any time on deposit with such banks or bankers: *And provided further*, That this act shall apply to Cuba only while occupied by the United States. [31 Stat. L. 658.]

Depositories of public moneys in island possessions.—See further R. S. sec. 5153, as amended by Act of March 3, 1901, ch. 871, NATIONAL BANKS, vol. 5, p. 109.

Sec. 3593. [*Public moneys subject to draft of the Treasurer.*] All public moneys paid into any depository shall be subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 59.

Sec. 3594. [*Superintendent of mint at Carson and assay office at Boisé City to be assistant treasurers.*] The superintendent of the mint at Carson City, and the superintendent of the assay-office at Boisé City, shall be assistant treasurers of the United States, and shall respectively have the custody and care of all public moneys deposited therein, and shall perform all the duties required of them in reference to the receipt, safe keeping, transfer, and disbursement of all such moneys, as provided by law. [R. S.]

Act of April 21, 1862, ch. 59, 12 Stat. L. 383; Act of March 3, 1863, ch. 96, 12 Stat. L. 770; Act of Feb. 19, 1869, ch. 33, 15 Stat.

L. 271; Act of March 3, 1871, ch. 113, 16 Stat. L. 485; Act of Feb. 12, 1873, ch. 131, 17 Stat. L. 435.

Sec. 3595. [*Appointment, etc., of assistant treasurers.*] There shall be assistant treasurers of the United States, appointed from time to time by the President, by and with the advice and consent of the Senate, to serve for the term of four years, as follows:

One at Boston.
 One at New York.
 One at Philadelphia.
 One at Baltimore.
 One at Charleston.
 One at New Orleans.
 One at Saint Louis.
 One at San Francisco.
 One at Cincinnati.
 One at Chicago. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 60; Act of April 7, 1868, ch. 28, 14 Stat. L. 26; Act of June 15, 1870, ch. 129, 16 Stat. L. 152; Act of Feb. 12, 1873, ch. 131, 17 Stat. L. 435; Act of March 3, 1873, ch. 228; 17 Stat. L. 543.

Partial repeal.—So much of this section as provides for an assistant treasurer at Charleston was repealed by the provisions in the following text.

When assistant treasurer may pay out money.—The assistant treasurer in New

York is a custodian of the public money, which he may pay out or transfer upon the order of the proper department or officer; but he has no authority to settle and adjust, that is to say, to determine upon the validity of any claim against the government. He can pay only after the adjustment has been made "in the treasury department," and then upon drafts drawn for that purpose by the treasurer. *Cooke v. U. S.*, (1875) 91 U. S. 389.

[SEC. 1.] [*Assistant treasurer at Charleston abolished — depositories abolished.*] * * * And so much of section thirty-five hundred and ninety-five of the Revised Statutes as provides for the appointment of an assistant treasurer of the United States at Charleston is hereby repealed from and after September, thirtieth, eighteen hundred and seventy-six; and the secretary of the Treasury is directed to discontinue, from said date, the depositories at Buffalo, New York Santa Fe, New Mexico, and Pittsburgh, Pennsylvania. * * * [19 Stat. L. 155.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Aug. 15, 1876, ch. 287.

Sec. 3596. [*Salaries of assistant treasurers.*] The assistant treasurers shall be entitled to the following salaries, to be paid quarter-yearly at the Treasury of the United States, to wit:

First. The assistant treasurer at Boston, to five thousand dollars a year.

Second. The assistant treasurer at New York, to eight thousand dollars a year.

Third. The assistant treasurer at Philadelphia, to five thousand dollars a year.

Fourth. The assistant treasurer at Baltimore, to five thousand dollars a year.

Fifth. The assistant treasurer at Charleston, to four thousand dollars a year.

Sixth. The assistant treasurer at New Orleans, to four thousand five hundred dollars a year.

Seventh. The assistant treasurer at Saint Louis, to five thousand dollars a year.

Eighth. The assistant treasurer at San Francisco, to six thousand dollars a year.

Ninth. The assistant treasurer at Cincinnati, to five thousand dollars a year.

Tenth. The assistant treasurer at Chicago, to five thousand dollars a year. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 65; Act of March 3, 1853, ch. 98, 10 Stat. L. 214; Act of March 3, 1855, ch. 175, 10 Stat. L. 656; Act of April 7, 1866, ch. 28, 14 Stat. L. 26; Act of July 20, 1868, ch. 179, 15 Stat. L. 121; Act of June 15, 1870, ch. 129, 16 Stat. L. 152; Act of Feb. 12, 1873, ch. 131, 17 Stat. L. 435; Act of March 3, 1873, ch. 228, 17 Stat. L. 543.

Assistant treasurer at Charleston.—See preceding text.

The salaries above named have not been uniformly followed in the appropriation acts. The Act of Feb. 25, 1903, ch. 755, 32 Stat. L. 877, allows \$4,500 to the assistant treasurers at Cincinnati, Philadelphia, St. Louis, San Francisco, and Baltimore.

Sec. 3597. [*Receipt of commissions and perquisites forbidden.*] The salaries named in the preceding section shall be in full for the services of the respective officers, and none of them shall charge or receive any commission, pay, or perquisite, for any official service of any character or description whatsoever. Every such officer who makes any such charge, or receives any such compensation, shall be deemed guilty of a misdemeanor, and shall be fined or imprisoned, or both. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 65.

Sec. 3598. [*Rooms for use of assistant treasurers.*] The rooms assigned by law to be occupied by the assistant treasurers, together with the fire-proof vaults therein, or connected therewith, shall be appropriated to the use of the assistant treasurers, and for the safe-keeping of the public moneys deposited with them, respectively. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 59; Act of June 15, 1870, ch. 129, 16 Stat. L. 152.

Sec. 3599. [*Their care and the use of the rooms.*] The assistant treasurers shall have the charge and care of the rooms, vaults, and safes assigned to them, respectively, and shall there perform the duties required of them relating to the receipt, safe-keeping, transfer, and disbursement of the public moneys. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 59; Act of June 15, 1870, ch. 129, 16 Stat. L. 152.

Sec. 3600. [*Bonds of assistant treasurers.*] All assistant treasurers, and all officers in any mint, or assay-office, authorized by law to act as assistant treasurers, shall, respectively, give bonds to the United States for the faithful discharge of the duties of their respective offices as assistant treasurers, according to law, and for such amounts as shall be directed by the Secretary of the Treasury, with sureties to the satisfaction of the Solicitor of the Treasury; and shall, from time to time, renew, strengthen, and increase their official bonds as the Secretary of the Treasury may direct. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 60; Act of April 7, 1868, ch. 28, 14 Stat. L. 26; Act of June 15, 1870, ch. 129, 16 Stat. L. 152; Act of Feb. 12, 1873, ch. 131, 17 Stat. L. 435; Act of March 3, 1873, ch. 228, 17 Stat. L. 543.

The form of the bond required to be given by assistant treasurers under this section—whether the parties thereto are to be jointly and severally, or may be only jointly bound, and whether each security is to bind himself for the full amount of the penalty, or may restrict his liability to a less amount—is not made the subject of statutory regulation but is left to the determination of the

officers by whom the bond is to be approved. But the form ordinarily made use of in practice is that wherein the principal and sureties are jointly and severally bound for the full amount of the penalty. This form being preferable to any other and its use sanctioned by long practice, the adoption of a different form (though it might not be inconsistent with the terms of the statute so to do) would not be warranted unless the circumstances of the particular case were such that the public interests could not otherwise be served. (1835) 18 Op. Atty. Gen. 274.

Sec. 3601. [*Subordinate officers, etc., at Boston.*] There shall be employed in the office of the assistant treasurer at Boston: One chief clerk, at two thousand seven hundred dollars a year; one paying-teller, at two thousand five hundred dollars; one chief interest-clerk, at two thousand five hundred dollars; one receiving teller, at one thousand eight hundred dollars; one first book-keeper, at one thousand seven hundred dollars; one second book-keeper, "depositors'" accounts, at one thousand five hundred dollars; one stamp and new fractional-currency clerk, at one thousand eight hundred dollars; one specie-clerk, at one thousand five hundred dollars; two coupon-clerks, at one thousand four hundred dollars each; one fractional-currency redemption clerk, at one thousand two hundred dollars; one receipt-clerk, at one thousand two hundred dollars; one assistant book-keeper, at eight hundred dollars; one money-clerk, at one thousand dollars; one assistant currency-redemption clerk, at one thousand one hundred dollars; one assistant currency-redemption clerk, at one thousand dollars; one messenger and chief watchman, at one thousand and sixty dollars; two watchmen, at eight hundred and fifty dollars each; one assistant specie-clerk, at one thousand four hundred dollars. [R. S.]

Act of March 19, 1862, ch. 48, 12 Stat. L. 70; Act of March 3, 1873, ch. 226, 17 Stat. 373; Act of July 23, 1866, ch. 208, 14 Stat. L. 495, 496.
202; Act of May 8, 1872, ch. 140, 17 Stat. L.

Sec. 3602. [*Deputy assistant treasurer at New York.*] The assistant treasurer at New York may, with the approval of the Secretary of the Treasury, appoint from among his clerks a competent person to be called the deputy assistant treasurer of the United States. Such deputy assistant treasurer, in addition to other duties performed by him, and the duties which he may be required to perform by the assistant treasurer, is authorized to witness the execution of all transfers of Government stock and powers of attorney, and to sign all bullion-receipts, with like effect as if the same were witnessed or signed by the assistant treasurer in person. [R. S.]

Act of March 6, 1862, ch. 37, 12 Stat. L. 353.

Sec. 3603. [*Appointment and salaries of subordinate officers, etc., at New York.*] There shall be employed in the office of the assistant treasurer at New York: One deputy assistant treasurer, at three thousand six hundred dollars a year; one cashier and chief clerk, at four thousand two hundred dollars; one chief of coin division, at four thousand dollars; one chief of note-paying division, at three thousand dollars; one chief of note-receiving division, at three thousand dollars; one chief of check-division, at three thousand dollars; one chief of registered-interest division, at two thousand eight hundred dollars; one chief of coupon-interest division, at two thousand five hundred dollars; one chief of fractional-currency division, at two thousand five hundred dollars; one chief of bond division, at two thousand four hundred dollars; one chief of canceled-check and record division, at two thousand dollars; two clerks, at two thousand four hundred dollars each; six clerks, at two thousand two hundred dollars each; ten clerks, at two thousand dollars each; nine clerks, at one thousand eight hundred dollars each; four clerks, at one thousand seven hundred dollars each; four clerks, at one thousand six hundred dollars each; ten clerks, at one thousand four hundred dollars each; three clerks, at one thousand two hundred dollars each; five messengers, at one thousand three hundred dollars each; one messenger, at one thousand two hundred dollars; one keeper of building, at one thousand eight hundred dollars; one chief detective, at one thousand eight hundred dollars; one assistant detective, at one

thousand four hundred dollars; four hall-men, at one thousand dollars each; six watchmen, at seven hundred and thirty dollars each; one engineer, at one thousand dollars; one porter, at nine hundred dollars. [R. S.]

Act of Aug. 4, 1854, ch. 242, 10 Stat. L. 573; Act of March 6, 1862, ch. 37, 12 Stat. L. 353; Act of March 3, 1873, ch. 226, 17 Stat. L. 495.

Sec. 3604. [*Appointment of other clerks, messengers, etc., at New York.*] The assistant treasurer at New York may appoint, from time to time, by and with the consent and approbation of the Secretary of the Treasury, such other clerks, messengers, and watchmen, in addition to those already employed by him, as the exigencies of the public business may require, at rates of compensation to be fixed by the Secretary of the Treasury, but such rates shall in no case exceed those allowed by law for the several persons similarly employed in the office of the said assistant treasurer. [R. S.]

Act of March 6, 1862, ch. 37, 12 Stat. L. 353.

Sec. 3605. [*Subordinate officers, etc., at Philadelphia.*] There shall be employed in the office of the assistant treasurer at Philadelphia: One cashier and chief clerk, at two thousand seven hundred dollars a year; one chief book-keeper, at two thousand five hundred dollars; one chief interest-clerk, at one thousand nine hundred dollars; one assistant book-keeper, at one thousand eight hundred dollars; one coin-teller, at one thousand seven hundred dollars; one registered-interest clerk, at one thousand seven hundred dollars; one assistant coupon-clerk, at one thousand six hundred dollars; one fractional currency clerk, at one thousand six hundred dollars; one assistant registered-loan clerk, at one thousand five hundred dollars; one assistant registered-loan clerk, at one thousand four hundred dollars; one assistant coin-teller, at one thousand four hundred dollars; one assistant fractional-currency clerk, at one thousand four hundred dollars; one receiving-teller, at one thousand three hundred dollars; one assistant receiving-teller, at one thousand two hundred dollars; one superintendent of building, at one thousand one hundred dollars; seven female counters, at nine hundred dollars each; four watchmen, at nine hundred and thirty dollars each. [R. S.]

Act of March 3, 1863, ch. 79, 12 Stat. L. 753; Act of March 3, 1873, ch. 226, 17 Stat. L. 496.

See the annual appropriation acts for the

present allowances to the offices of the various subtreasurers. They do not correspond with the provisions in sections 3605-3612.

Sec. 3606. [*At Baltimore.*] There shall be employed in the office of the assistant treasurer at Baltimore: One cashier, at two thousand five hundred dollars a year; three clerks, at one thousand eight hundred dollars each; three clerks, at one thousand four hundred dollars each; two clerks, at one thousand two hundred dollars each; one messenger, at eight hundred and forty dollars; five vault-watchmen, at seven hundred and twenty dollars each. [R. S.]

Act of June 15, 1870, ch. 129, 16 Stat. L. 152; Act of March 3, 1873, ch. 226, 17 Stat. L. 496. See note to R. S. sec. 3605, *supra*.

Sec. 3607. [*At Saint Louis.*] There shall be employed in the office of the assistant treasurer at Saint Louis: One chief clerk and teller, at two thousand five hundred dollars a year; one assistant teller, at one thousand eight hundred dollars; one book-keeper, at one thousand five hundred dollars; one assistant book-keeper, at one thousand two hundred dollars; one messenger, at one thousand dollars; and four watchmen, at seven hundred dollars each. [R. S.]

Act of May 20, 1862, ch. 76, 12 Stat. L. 394; Act of March 3, 1873, ch. 226, 17 Stat. L. 496. See note to R. S. sec. 3605, *supra*.

Sec. 3608. [*At Charleston.*] There shall be employed in the office of the assistant treasurer at Charleston, South Carolina: One clerk, at one thousand eight hundred dollars a year; one clerk, at one thousand six hundred dollars; one assistant messenger, at seven hundred and twenty dollars; and two watchmen, at seven hundred and twenty dollars each. [*R. S.*]

Act of May 8, 1872, ch. 140, 17 Stat. L. 71; — See provision from Act of Aug. 15, 1876, Act of March 3, 1873, ch. 226, 17 Stat. L. 496. ch. 287, *supra*, p. 541.
 Assistant treasurer at Charleston abolished.

Sec. 3609. [*At New Orleans.*] There shall be employed in the office of the assistant treasurer at New Orleans: One chief clerk and cashier, at two thousand five hundred dollars a year; one clerk, at two thousand dollars; two clerks, at one thousand five hundred dollars each; one porter, at nine hundred dollars; and two watchmen, at seven hundred and twenty dollars each. [*R. S.*]

Act of June 25, 1864, ch. 147, 13 Stat. L. 161; Act of March 3, 1873, ch. 226, 17 Stat. L. 496.
 See note to R. S. sec. 3605, *supra*.

Sec. 3610. [*At San Francisco.*] There shall be employed in the office of the assistant treasurer at San Francisco: One cashier, at three thousand dollars a year; one book-keeper, at two thousand five hundred dollars; one assistant cashier, at two thousand dollars; one assistant book-keeper, at two thousand dollars; one stamp-clerk, at two thousand four hundred dollars; one clerk, at one thousand eight hundred dollars; three night-watchmen, at one thousand five hundred dollars each; one day-watchman, at nine hundred and sixty dollars. [*R. S.*]

Act of March 3, 1873, ch. 226, 17 Stat. L. 496.
 See note to R. S. sec. 3605, *supra*.

Sec. 3611. [*At Chicago.*] There shall be employed in the office of the assistant treasurer at Chicago: One cashier, at two thousand five hundred dollars a year; one clerk, at one thousand eight hundred dollars; two clerks, at one thousand five hundred dollars each; one clerk, at one thousand two hundred dollars; one messenger, at eight hundred and forty dollars; and one watchman, at seven hundred and twenty dollars. [*R. S.*]

Act of March 3, 1873, ch. 228, 17 Stat. L. 543; Act of March 3, 1873, ch. 226, 17 Stat. L. 496.
 See note to R. S. sec. 3605, *supra*.

Sec. 3612. [*At Cincinnati.*] There shall be appointed in the office of the assistant treasurer at Cincinnati: One cashier, at two thousand dollars a year; one clerk, at one thousand eight hundred dollars; one clerk, at one thousand five hundred dollars; two clerks, at one thousand two hundred dollars each; two clerks, at one thousand dollars each; one messenger, at six hundred dollars; two watchmen, one at seven hundred and twenty dollars, and one at two hundred and forty dollars. [*R. S.*]

Act of March 3, 1873, ch. 228, 17 Stat. L. 543; Act of March 3, 1873, ch. 226, 17 Stat. L. 496.
 See note to R. S. sec. 3605, *supra*.

Sec. 3613. [*Deputies in case of sickness or absence.*] In case of the sickness or unavoidable absence of any assistant treasurer or depository from his office, he may, with the approval of the Secretary of the Treasury, authorize the chief clerk, or some other clerk employed therein, to act in his place, and to discharge all the duties required by law of such assistant treasurer or depository. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in

such cases. Such acting officer shall moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the assistant treasurer or depositary, respectively, for whom he acts. [R. S.]

Act of Feb. 13, 1865, ch. 32, 13 Stat. L. 427.

Sec. 3614. [*Bond of special agents.*] Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve. [R. S.]

Act of Aug. 4, 1854, ch. 242, 10 Stat. L. 573.

Authority of head of department. — "The head of a department of the government is authorized in the administration of the duties of the office, to employ agents and determine when an exigency arises demanding their employment." U. S. v. Potter, (1879) 7 Reporter 675, 27 Fed. Cas. No. 16,076.

Nature of contract of bond. — "The contract in an official bond for the accounting of moneys is not a contract of bailment in which liability depends on the question of reasonable and ordinary care, but it is an absolute contract to pay the money in any event." (1891) 20 Op. Atty-Gen. 24.

Sec. 3615. [*Collectors of public moneys to pay over.*] All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster-General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands. All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and Saint Louis shall, upon the same direction, pay over to the assistant treasurers in their respective cities, at their offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law. It shall be the duty of the Secretary and Postmaster-General, respectively, to direct such payments by the collectors and receivers at all the said places, at least as often as once in each week, and as much oftener as they may think proper. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 61; Act of Feb. 12, 1873, ch. 131, 17 Stat. L. 435.

Extent of liability. — Such collector or receiver is a bailee of the government and by the common law is only bound to due diligence and only liable for negligence or dishonesty; but by the policy of the Acts of Congress on the subject a more stringent accountability is exacted. U. S. v. Thomas, (1872) 15 Wall. (U. S.) 337.

The measure of this enhanced accountability is particularly to be found in the official bond required by these officers, the condition of which requires the payment of the moneys that come to their hands as and when directed; the performance of which condition can only be excused by an overruling necessity. U. S. v. Thomas, (1872) 15 Wall. (U. S.) 337.

Payment prevented by Act of God, etc. — A collector or receiver of public money under bond to keep it safely and pay it when required, is not bound to render the money at all events, but is excused if prevented from rendering it by the act of God or the public enemy without any neglect or fault on his part. U. S. v. Thomas, (1872) 15 Wall. (U. S.) 337.

Seizure by rebels. — The late rebellion being a public war, the forcible seizure by the rebel authorities of public moneys in the hands of loyal government agents against their will and without their fault or negligence was a sufficient discharge from their obligations in reference to said moneys. U. S. v. Thomas, (1872) 15 Wall. (U. S.) 337.

Sec. 3616. [*How marshals and district attorneys may pay into Treasury.*] All marshals, district attorneys, and other persons than those mentioned in the preceding section, having public money to pay to the United States, may pay

the same to any depositary constituted by or in pursuance of law, which may be designated by the Secretary of the Treasury. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 62; Act of July 8, 1870, ch. 230, 16 Stat. L. 216. See also MONEY PAID INTO COURT, vol. 5, p. 70.

Public moneys only.—“It is obvious from these provisions that it was only public money of the United States of which national banks could be made depositaries, and it was therefore only public money which an officer could deposit in them, whether he received it originally, or received it to disburse.” *Coudert v. U. S.*, (1899) 175 U. S. 178.

Fund held pending litigation.—“The designated depositories are intended as places for the deposit of the public moneys of the United States; that is to say, moneys belonging to the United States. No officer of the United States can charge the government with liability for moneys in his hands not public moneys, by depositing them to his own credit in a bank designated as a depositary. In this case the money deposited belonged for the time being to the court, and

was held as a trust fund pending the litigation. The United States claimed it, but their claim was contested. So long as this contest remained undecided the officers of the treasury could not control the fund. Although deposited with a bank that was a designated depositary it was not paid into the treasury. No one could withdraw it except the court or the clerk, and it was held for the benefit of whomsoever in the end it should be found to belong.” *Branch v. U. S.*, (1879) 100 U. S. 673; *Coudert v. U. S.*, (1899) 175 U. S. 178, *affirming* (C. C. A. 1896) 73 Fed. Rep. 505.

Proceeds of sale of prize.—Money deposited by a marshal in a designated depositary as the proceeds of the sale of a prize, there to await the decree of the prize court, is not public money, and the United States will not be responsible for such amount on failure of the bank. *Coudert v. U. S.*, (1899) 175 U. S. 178, *affirming* (C. C. A. 1896) 73 Fed. Rep. 505.

Sec. 3617. [*Moneys to be deposited without deduction.*] The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever. But nothing herein shall affect any provision relating to the revenues of the Post-Office Department. [R. S.]

Act of March 3, 1849, ch. 110, 9 Stat. L. 398; Act of Sept. 28, 1850, ch. 78, 9 Stat. L. 507.

Receipts from government telegraph lines.—See TELEGRAPH AND CABLE LINES.

Since the year 1831, it has become the general policy of the United States to require that all moneys collected in behalf of the United States shall be paid into the treasury. Some exceptions thereto, not depending upon any special reasons, which here and there have escaped attention, are gradually disappearing. (1883) 17 Op. Atty-Gen. 592.

Intent of Act.—“This Act was intended to take away all excuse from collectors to withhold payments into the treasury, under the pretense that they were responsible as collectors, on various grounds, to individuals for services rendered, etc. This was the evil which the law was intended to remedy. And it was a regulation in civil cases and can have no direct application to” an indictment for embezzlement under section 5490. *U. S. v. Forsythe*, (1855) 6 McLean (U. S.) 584, 25 Fed. Cas. No. 15,133.

The fees of marshals, district attorneys, and clerks of the United States courts, in government suits, taxed and recovered as costs from the defendant therein, should be turned into the treasury and not paid to the officers: they being entitled to payment (by force of section 856 R. S.), only on settling

their accounts at the treasury and from the proper appropriation. (1877) 15 Op. Atty-Gen. 386.

Proceeds of sale of manifests and clearances.—The amount received by the customs officers on the northern frontier for each blank manifest or clearance sold under section 2648 is a fee intended for the use of the officer and does not come within the provisions of this section requiring “the gross sum of all moneys received from whatever source for the use of the United States,” etc., to be paid into the treasury. (1877) 15 Op. Atty-Gen. 654.

Proceeds of lumber of Indians.—The lumber made at a mill, on an Indian reservation, belonging to the Indians, is not the property of the United States, and the proceeds thereof received by the Indian agent are not money received “for the use of the United States” within the meaning of this section. *U. S. v. Sinnott*, (1886) 26 Fed. Rep. 84.

Recovery of fees paid into treasury.—A collector of customs who, pursuant to the peremptory order of the commissioner of customs, pays into the treasury moneys to which he is lawfully entitled as a part of the fees and emoluments of his office, is not precluded from recovering them in a suit against the United States. *U. S. v. Ellsworth*, (1879) 101 U. S. 170.

Sec. 3618. [*Proceeds of sales of material.*] All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue-cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law. [R. S.]

Act of March 3, 1847, ch. 48, 9 Stat. L. 171; Act of April 20, 1866, ch. 63, 14 Stat. L. 40; Act of July 28, 1866, ch. 299, 14 Stat. L. 336; Act of May 3, 1872, ch. 140, 17 Stat. L. 83; Act of June 8, 1872, ch. 348, 17 Stat. L. 337.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by inserting after the word "Army," where it first appears in the section, the words "or of materials, stores, or supplies sold to officers and soldiers of the Army," as above given.

Other provisions for the sale of old materials or property not required and the disposition of the proceeds of sale are found elsewhere in this work as follows:

Army, old ordnance materials. See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

Indians, property on reservations. See INDIANS, vol. 3, p. 371.

Life-saving stations, condemned articles. See LIFE SAVING, vol. 4, p. 811.

Military academy, sale of gas. See MILITARY ACADEMY, vol. 4, p. 888.

Militia, equipment. See MILITIA, vol. 4, p. 899.

Navy, old vessels and materials. See NAVY, vol. 5, p. 225.

Public documents, sale of. See PUBLIC DOCUMENTS.

Public printing, condemned or unserviceable machinery and materials. See PUBLIC PRINTING.

Public property, unproductive or not required. See PUBLIC PROPERTY.

Revenue cutters.—See REVENUE MARINE, *post*.

Authority of officers.—This section and section 1541 confer upon the secretary of the navy the only authority by which he can dispose of the materials of the United States navy. When in the judgment of the secretary they can be advantageously used, they must be used; when they cannot be so used, they must be sold at public sale and the proceeds covered into the treasury. No officer of the navy department had any authority, therefore, to deliver to the appellant the materials of the navy, to be sold by him, and to allow him to put the proceeds into his own pocket. *Steele v. U. S.*, (1885) 113 U. S. 128, *affirming* (1884) 19 Ct. Cl. 181.

Relation to appropriations.—It was said by Attorney-General Benjamin Harris Brewster, in (1882) 17 Op. Atty.-Gen. 480, that "This section provides how moneys derived

from sales of public property, with certain exceptions, shall be disposed of. Funds thus derived, where it is not otherwise provided by law, remain subject to future appropriation by Congress. They cannot be placed to the credit of existing appropriations or be applied to objects of expenditures within the same, thus enlarging such appropriations. But where articles are manufactured or purchased by one branch of the public service under an appropriation made for that purpose and are afterwards, on grounds of administrative expediency, transferred to another branch of the service, the latter thereupon reimbursing the appropriation of the former with the cost of the articles out of an appropriation applicable to the manufacture or purchase thereof, this transaction is not a sale either according to the ordinary or the legal significance of that term. It is nothing more than a transfer of the custody and use of the property and consequent accountability for the same accompanied by a transfer of the costs thereof from one appropriation to another within the scope of either of which the expenditure may properly come. The ownership (a transfer of which is an inseparable element in a sale of property) remains unchanged. Section 3618 extends only to such cases as relate to 'proceeds of sales,' receipts which are in the nature of revenue, belonging to no appropriation and not available for expenditure without authority from Congress."

Method of sale.—"These sections [3618, 3672] contemplate that there will be sales of old material necessarily made in the various departments of the government other than those included within the exceptions. For the mode in which such sales shall be conducted, whether by advertisement, at public auction, or otherwise, no specific provision is made. In these respects the sales are left to the discretion of the officer having charge of such old material. But it is required that when such sales are made the proceeds shall be covered into the treasury on account of 'proceeds of government property,' and that a detailed statement of them shall be thereafter made." (1877) 15 Op. Atty.-Gen. 322.

Sales included by exceptions.—"The sales which are included within the exceptions in this section are controlled by other sections which regulate the mode in which the sales of such property shall be made and the proceeds thereof applied." (1877) 15 Op. Atty.-Gen. 322.

Old material used as payment.—“The effect of those two comprehensive provisions [3618 and 1541], in our opinion, is to forbid in the strongest terms the use of old material in payment for work to be done or in exchange for other material or work. If old material can be advantageously used, it must be used by the proper officers for government purposes; if it cannot be advantageously used, then it must be sold at public sale, and the proceeds of the sale must not be ‘applied’ in payment for other material or for work, or for any other purpose, but be covered into the treasury.” *Steele v. U. S.*, (1884) 19 Ct. Cl. 181, *affirmed* (1885) 113 U. S. 128.

Exchanging articles.—The chief of the bureau of engraving and printing cannot be authorized by the secretary of the treasury to exchange certain old presses for a new press with the manufacturers so that but a small amount of money in addition will have to be paid to them therefor; yet the secretary may authorize a sale of the old presses to the manufacturers, the proceeds to be covered into the treasury, and at the same time a purchase of a new press can be made from them, paying for the same out of the appropriation available for that purpose. (1877) 15 Op. Atty.-Gen. 322.

Earnings of Indian training schools.—“Section 1, part 1, of the Act of May 11, 1880 (Richardson’s Supplement 525), authorizes the secretary of the interior to purchase for the Indian service articles manufactured in the schools, and provides that accounts of such transactions shall be kept in the Indian bureau and in the training schools and reports thereof made from time to time. * * *

This Act, as respects the earnings of these schools, supersedes section 3618 of the Revised Statutes.” (1883) 17 Op. Atty.-Gen. 531.

The proceeds of sales of articles manufactured in Indian manual and training schools should not be turned into the treasury, but be received by the Indian bureau and used for the benefit of the Indian children in the schools. (1883) 17 Op. Atty.-Gen. 531.

Lumber made at a mill owned by the Indians is not the property of the United States, and the proceeds of any sale thereof need not be conveyed into the treasury, but may be used by the agent for the benefit of the Indians. *U. S. v. Sinnott*, (1886) 26 Fed. Rep. 84.

Improvements on Mexican grant land.—With regard to the disposal of buildings and improvements on a military post established on land which was subsequently discovered to cover a Mexican grant, it was said by Attorney-General W. H. H. Miller, in (1891) 20 Op. Atty.-Gen. 284: “I am not able to say that section 3618, R. S., is a source of authority or anything more than a law regulating the disposition of the proceeds of ‘old material and condemned stores, supplies, or other public property,’ nor do I find any provision of law, either in the statutes proper or in the army regulations in force in 1863 and adopted by Congress by the Act of July 28, 1866 (14 Stat. 332), which seems to authorize the President or the secretary of war to dispose of property such as that in question.”

[*Expenses of sale of condemned property, etc., to be paid from proceeds.*]

* * * Treasury Department. That from the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of “proceeds of Government property” or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the accounting officers of the Treasury, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be. * * * [29 Stat. L. 268.]

This is from the Deficiencies Appropriation Act of June 8, 1896, ch. 373.

Sec. 3619. [*Penalty for withholding money.*] Every officer or agent who neglects or refuses to comply with the provisions of section thirty-six hundred and seventeen shall be subject to be removed from office, and to forfeit to the United States any share or part of the moneys withheld, to which he might otherwise be entitled. [R. S.]

Act of July 18, 1866, ch. 201, 14 Stat. L. 187.

Recovery of involuntary payment.—“Viewed in the light of these penal provisions, the payments made under the peremptory order of the commissioner cannot be regarded

as voluntary in the sense that the party making them is thereby precluded from maintaining an action to recover back so much of the money paid as he was entitled to retain.” *U. S. v. Ellsworth*, (1879) 101 U. S. 170.

Sec. 3620. [*Duty of disbursing officers.*] It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. [R. S.]

Act of June 14, 1866, ch. 122, 14 Stat. L. 64.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by inserting after the words "in pursuance of law," the words "and draw for the same only in favor of the persons to whom payment is made," as given in the text.

Effect of amendment.—"This amendment restores the law in this respect to the condition in which it was before the revision of the statutes." (1877) 15 Op. Atty.-Gen. 288.

The immediate object of [the amendment] is that the books or vouchers of the assistant treasurers of the United States, public depositaries, or other persons or institutions with whom the disbursing officer might be authorized by the secretary of the treasury to deposit the public moneys should show upon whose account and upon what claims or demands such moneys were paid out by the check of the disbursing officer. These checks would thus when compared with the vouchers of the disbursing officer tend to show in what mode the public moneys had been disposed of by him, and would afford a means of testing the accuracy of his accounts." (1877) 15 Op. Atty.-Gen. 288.

Drawn for authorized purpose only.—Each sum placed to the credit of a disbursing officer under warrants drawn by the secretary of the treasury, upon the treasury of the United States, directing certain amounts appropriated to be placed to the credit of the disbursing officer, constitutes a specific fund which cannot be legally appropriated to any other purpose than that authorized by law. *U. S. v. Morgan*, (1886) 28 Fed. Rep. 48.

Under specific appropriation.—A disbursing agent is not authorized to draw nor the treasurer to pay from appropriations for specific purposes or credits, any sums other than those authorized by law on account of the appropriations respectively. *U. S. v. Morgan*, (1886) 28 Fed. Rep. 48.

Moneys deposited are United States moneys.—The moneys of the United States placed in the hands of an assistant quartermaster in the United States army for disbursement by him as a disbursing officer

of the United States and deposited by him with an assistant treasurer of the United States, continue still to be moneys of the United States. *Morgan v. Van Dyck*, (1870) 7 Blatchf. (U. S.) 147, 17 Fed. Cas. No. 9,810.

Form of checks.—Under this section, as amended, the treasurers and assistant treasurers of the United States may be authorized to pay the checks of disbursing officers, where the same are drawn in favor of the persons to whom payment is made, but are payable to order or bearer. Whether such checks shall be made payable only to the persons entitled to payment, or to bearer, or to order, is a matter to be regulated entirely by the discretion of the secretary of the treasury. (1877) 15 Op. Atty.-Gen. 288.

Check as evidence of claim.—"If the evidence of the claim upon which the public money is paid is afforded by the check, all that is required by law has been complied with." (1877) 15 Op. Atty.-Gen. 288.

Transfer of claim.—"The treasury department has uniformly construed the words ['and to draw for the same only in favor of the persons to whom payment is made'] as meaning merely that such checks must be drawn in favor of the person to whom the disbursing officer is required to make payment, and not in favor of any other person, thus prohibiting the transfer of the claim to any other person before its settlement, and not as forbidding any words of negotiability." (1899) 22 Op. Atty.-Gen. 637.

Obligation of treasurer to pay drafts.—An assistant treasurer is not responsible to a disbursing agent for a breach of duty in not paying genuine drafts by the disbursing agent for moneys deposited. He is responsible only to the United States. The obligation of the assistant treasurer is an obligation to the United States and not to the disbursing agent, and there is nothing in the nature of a contract or agreement between the assistant treasurer and the disbursing agent which could be broken, so as to lay a foundation for an action of assumpsit. *Morgan v. Van Dyck*, (1870) 7 Blatchf. (U. S.) 147, 7 Fed. Cas. No. 9,810.

Sec. 3621. [*Moneys to be deposited in public depositaries — receipts to be given — postal revenues.*] Every person who shall have moneys of the United

States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, an Assistant Treasurer, or some public depository of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer, the Assistant Treasurer, or the public depository shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided*, That postal revenues and debts due to the Post-Office Department shall be paid into the Treasury in the manner now required by law. [R. S.]

This section was amended to read as above by the Act of May 28, 1896, ch. 252, sec. 5, 29 Stat. L. 179. The section originally read as follows:

"SEC. 3621. Every person who shall have moneys of the United States in his hands or possession shall pay the same to the Treasurer, an assistant treasurer, or some public depository of the United States, and take his receipt for the same, in duplicate, and forward one of them forthwith to the Secretary of the Treasury." Act of March 3, 1857, ch. 114, 11 Stat. L. 249.

Postal revenues.—See POST-OFFICE DEPARTMENT, *ante*, p. 1.

Effect of requests and regulations to pay.—Though statutes oblige receivers to pay over when required by the secretary of the treasury, a declaration stating that the receiver has been often requested to pay, is enough after verdict, there having been general regulations in force at the time the bond here sued on was given, requiring receivers to pay at stated times. *Boyden v. U. S.*, (1871) 13 Wall. (U. S.) 17.

Loss by failure of bank.—If a disbursing officer in good faith, without knowledge or suspicion of a bank's insolvency, and without the expectation of gain, or other private motive, withdrew public moneys from the treasury and deposited them with the bank, it being a designated depository and the deposit being at that time authorized by law, the loss of

the moneys through the failure of the bank cannot be imputed to the fault or negligence of the officer within the meaning of the Disbursing Officers Act (R. S. sec. 1059). *Hobbs's Case*, (1881) 17 Ct. Cl. 189.

Money not promptly paid over, seized by rebels.—Where a receiver of public money has such moneys in his hands, which would not have been in his possession if he had paid them over with the promptness that the Acts of Congress and the treasury regulations made in pursuance of them, prescribing the duties of receivers in this respect, made it his duty to use, and which therefore, inasmuch as the duties of receivers under their official bonds are defined by those acts and treasury regulations, it was also his duty under his official bond to use, evidence that the moneys were forcibly taken from him by the agent of the so-called Confederate government, usurping the authority of the rightful government and compelling obedience to itself exclusively throughout the state in which the receiver was, was held to have been rightly refused in a suit by the government on the official bond of such receiver, as short of meeting the necessity of the case; it having been owing to the default of the receiver in not paying over promptly and at right times, that the moneys were exposed to seizure, at all, by the usurping government. *Bevans v. U. S.*, (1871) 13 Wall. (U. S.) 56.

Sec. 3622. [Accounts.] Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury, or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require. [R. S.]

Act of July 17, 1862, ch. 199, 12 Stat. L. 593; Res. of March 2, 1867, No. 48, 14 Stat. L. 571; Act of July 15, 1870, ch. 295, 16 Stat. L. 334.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 249, by striking out the word "Department" where it last appears in such section and inserting

in place thereof the word "Departments" as above given. It was again amended by the Act of July 31, 1894, ch. 174, sec. 12, 28 Stat. L. 209, by striking out, after the words "complied with the provisions of this section," the words "The Secretary of the Treasury may, if in his opinion the circumstances of the case justify and require it, extend the time hereinbefore prescribed for the rendition of accounts," appearing in the section as originally enacted.

For substitute for parts of this section, sec Act of July 31, 1894, ch. 174, sec. 12, given in TREASURY DEPARTMENT.

See also following text.

To whom applicable. — The first clause of this section requires "the rendition of monthly accounts by every officer or agent who receives advances of public money from the treasury to be disbursed under appropriations made by Congress and also by every officer or agent who collects and receives fees and revenues which he is by law required to account for and pay into the treasury." (1890) 19 Op. Atty.-Gen. 557.

Purpose of ten days' extension. — "An examination of the language of the original

statute shows that the ten days allowed after the expiration of each month is an extension of time given the officer for the purpose of enabling him to prepare his accounts, such language explicitly stating that it was the time within which the officer should mail or otherwise forward his accounts." (1878) 16 Op. Atty.-Gen. 222.

Effect of last clause. — "The provision that no construction is to be given to the statute that shall restrain the head of any department from requiring such other returns or reports from the officer or agent subject to the control of such head as the public interest may require * * * is intended to enable the head of the department to require, where he may think the circumstances demand it, more frequent accounts, and is also a provision exceptional in its character." (1878) 16 Op. Atty.-Gen. 222.

The property accounts of quartermasters in the army should be transmitted from the war department to the proper accounting officers of the treasury for settlement — such settlement to be made by them, however, under the direction of the secretary of war. (1871) 13 Op. Atty.-Gen. 482.

SEC. 4. [*Accounts of disbursing officers.*] That hereafter all disbursing officers of the United States shall render their accounts quarterly; and the Secretary of the Senate shall render his accounts as heretofore; but the Secretary of the Treasury may direct any or all such accounts to be rendered more frequently when in his judgment the public interests may require. [26 Stat. L. 413.]

This is from the Sundry Civil Appropriation Act of Aug. 30, 1890, ch. 837.

Sec. 3623. [*Distinct accounts required.*] All officers, agents, or other persons, receiving public moneys, shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them. [R. S.]

Act of March 3, 1809, ch. 28, 2 Stat. L. 535.

Effect of other Acts. — Section 4 of the Act of June 11, 1878, chapter 180, requires the commissioners of the District of Columbia to render accounts for their disbursements thereunder to the accounting officers of the treasury for adjustment and settlement, which by implication may be in accordance with the laws and regulations and usages by which these officers are governed so far as the same are applicable to such accounts. (1883) 17 Op. Atty.-Gen. 574.

Commissioners of District of Columbia. — The provisions of sections 3623 and 3678 R. S., are applicable to the commissioners of the District of Columbia, and they and their bondsmen are liable to suit on their bond for the recovery of balances found due from them on the settlement of their accounts. (1883) 17 Op. Atty.-Gen. 574.

Temporary disbursing officer. — The responsibility of a temporary disbursing officer is precisely the same as that of the regu-

larly appointed officer who has given his official bond with surety, and if his account has been erroneously settled it may be opened and any balance remaining due from him to the United States may be recovered in a regular course of legal proceedings. *Ex p. Randolph*, (1833) 2 Brock. (U. S.) 447, 20 Fed. Cas. No. 11,558.

Moneys applied to accounts of another term. — By no act of the officer or of the treasury department or of both combined can official moneys collected by the officer and paid into the treasury department during one term of office be appropriated to the accounts of the other term to the prejudice of the sureties for the respective terms. (*Citing U. S. v. January*, (1813) 7 Cranch (U. S.) 572; *U. S. v. Irving*, (1843) 1 How. (U. S.) 250; *Jones v. U. S.*, (1849) 7 How. (U. S.) 681; *State v. Middleton*, (1882) 57 Tex. 185). *U. S. v. Morgan*, (1886) 28 Fed. Rep. 48.

Discharge of private claims. — "This enactment plainly makes it unlawful for the persons embraced within its purview to ap-

appropriate the public money to the discharge of their own claims, unless a distinct appropriation for that purpose shall have been made by law." (1834) 2 Op. Atty.-Gen. 663.

Appropriating disbursing account for independent obligation. — Where a disbursing officer undertook to appropriate by his drafts on the treasurer a part of the disbursing account to the discharge of his independent obligation for passport moneys, and the treasurer concurred in the act with full knowledge of the fact, but parted with no money and only made the corresponding entries in the books, the act was a fraud on the sureties and illegal as respects all who concurred in it. The United States having parted with nothing cannot claim in making up its account of the balance due on the disbursing

agents' account the benefit of those illegal debits to the prejudice of the sureties, but the latter are entitled to have the disbursing accounts restated and the illegal debits canceled. *U. S. v. Morgan*, (1886) 28 Fed. Rep. 48.

The use of moneys received from the issuing of passports in the possession of a disbursing agent to pay legal demands upon other funds in the treasury, and the subsequent drawing of checks upon the specific appropriations account for the purpose of paying into the treasury the passport moneys which he was bound to turn over to the government, is a course of procedure which is unauthorized and illegal. *U. S. v. Morgan*, (1886) 28 Fed. Rep. 48.

[*Account of disbursements under army appropriation acts.*] * * *

That hereafter all officers, agents, or other persons receiving public moneys appropriated by this or any subsequent Army appropriation act shall account for the disbursement thereof according to the several and distinct items of appropriation expressed in such act. [23 Stat. L. 113.]

This is from the Army Appropriation Act of July 5, 1884, ch. 217.

[SEC. 1.] [*Books, etc., of disbursing officers open to inspection.*] * * *

All books, papers, and other matters relating to the office or accounts of disbursing officers of the Executive Departments, and commissions, boards, and establishments of the Government in the District of Columbia shall at all times be subject to inspection and examination by the Comptroller of the Treasury and the Auditor of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officials. * * * [29 Stat. L. 550.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Feb. 19, 1897, ch. 265.

Sec. 3624. [*Suits to recover money from officers, regulated.*] Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the First Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum per annum, from the time of receiving the money until it shall be repaid into the Treasury. [*B. S.*]

Act of March 3, 1797, ch. 20, 1 Stat. L. 512.

First comptroller of the treasury is now designated Comptroller of the Treasury, see TREASURY DEPARTMENT.

Nature of Acts. — "This section, and also sections 3625 and 3217, R. S. (the latter applying solely to collectors of internal revenue), have for their object the enforcement of the liabilities of officers who are accountable for public money; but though they

extend to revenue officers they cannot properly be regarded as revenue laws." (1878) 16 Op. Atty.-Gen. 143.

Effect on sureties. — "This statute is mandatory, and the sureties on the bond must be held to have signed it in view of the requirement as to the date from which interest should be computed." *Smythe v. U. S.*, (1903) 188 U. S. 156, *affirming* (C. C. A. 1901) 107 Fed. Rep. 376.

Liability of officers and sureties. — "The

government in accepting bonds from an officer does not become an insurer to protect the sureties thereon against loss. The fact that a deputy steals or embezzles the public money or stamps, which are the equivalent of money, under the charge of the collector is wholly immaterial. The principal and his sureties are liable if the principal does not properly account therefor, no matter in what way or by whom the same may have been taken, unless it be by the act of God or the public enemy. The general rule upon this subject is to the effect that public officers who are intrusted with public funds and required to give bonds for the faithful discharge of their official duties are not mere bailees of the money to be exonerated by the exercise of ordinary care and diligence. Their liability is fixed by their bond. The fact that money is taken, embezzled, or stolen from them without any fault or negligence upon their part does not release them from liability on their official bonds." (*Citing* *Boshyshell v. U. S.*, (C. C. A. 1896) 77 Fed. Rep. 945; *U. S. v. Bryan*, (1897) 82 Fed. Rep. 290; *Bryan v. U. S.*, (C. C. A. 1898) 90 Fed. Rep. 473; *U. S. v. Zabriskie*, (1898) 87 Fed. Rep. 718; *Smythe v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 376, and authorities there cited; *State v. Nevin*, (1885) 19 Nev. 162, and authorities there cited. *Pond v. U. S.*, (C. C. A. 1901) 111 Fed. Rep. 989.

Ground of right of recovery.—In an action on the bond of an officer receiving public funds, the right of the government to recover does not rest on an implied contract of bailment, but on the express contract of the bond to pay over the funds. *Smythe v. U. S.*, (1903) 189 U. S. 156, *affirming* (C. C. A. 1901) 107 Fed. Rep. 376; *Bevans v. U. S.*, (1871) 13 Wall. (U. S.) 56; *Boyden v. U. S.*, (1871) 13 Wall. (U. S.) 17; *U. S. v. Keebler*, (1869) 9 Wall. (U. S.) 83; *U. S. v. Dashiell*, (1866) 4 Wall. (U. S.) 182; *U. S. v. Morgan*, (1850) 11 How. (U. S.) 156; *U. S. v. Prescott*, (1845) 3 How. (U. S.) 578.

In *U. S. v. Morgan*, (1850) 11 How. (U. S.) 154, in an action upon the bond of a collector of customs on the ground that the conditions of the bond had been broken by not paying over large sums of money collected for the United States and by not making seasonable returns of his accounts, the court characterized as an erroneous impression that the collector "was acting as a bailee, and under the responsibilities of only the ordinary diligence of a depositary as to the canceled notes, when in truth he was acting under his commission and duties by law, as collector, and under the conditions of his bond. The collector is no more to be treated as a bailee in this case than he would be if the notes were still considered for all purposes as money. He did not receive them as a bailee, but as a collecting officer. He is liable for them on his bond and not on any original bailment or lending. And if the case can be likened to any species of bailment in forwarding them, by which they were lost, it is that of a common carrier to transmit them to the treasury, and in doing which he is not exonerated by ordinary diligence but must answer for losses by larceny, and even robbery."

erated by ordinary diligence but must answer for losses by larceny, and even robbery."

In *Boyden v. U. S.*, (1871) 13 Wall. (U. S.) 17, which was an action upon a bond of a receiver of public money—the defense being that the receiver had been by irresistible force robbed of the money sued for—the court said: "Were a receiver of public moneys, who has given bond for the faithful performance of his duties as required by law, a mere ordinary bailee, it might be that he would be relieved by proof that the money had been destroyed by fire or stolen from him or taken by irresistible force. He would then be bound only to the exercise of ordinary care, even though a bailee for hire. The contract of bailment implies no more except in the case of common carriers, and the duty of a receiver, *virtute officii*, is to bring to the discharge of his trust that prudence, caution, and attention which careful men usually bring to the conduct of their own affairs. He is to pay over the money in his hands as required by law, but he is not an insurer. He may, however, make himself an insurer by express contract, and this he does when he binds himself in a penal bond to perform the duties of his office without exception. There is an established difference between a duty created merely by law, and one to which is added the obligation of an express undertaking. The law does not compel to impossibilities, but it is a settled rule that if performance of an express engagement becomes impossible, by reason of anything occurring after the contract was made though unforeseen by the contracting party and not within his control, he will not be excused. * * * If, as we have seen, his liability is to be measured by his bond, and that binds him to pay the money, then the cause which renders it impossible for him to pay is of no importance, for he has assumed the risk of it."

Accountability is ground for suit.—"The true construction of section 3624 is that when a collector of internal revenue is sued upon his bond, he is sued as a person accountable for public money, and it is his accountability to the United States as a recipient of public money that renders him liable to suit, although in point of fact the money was received by him as a collector." (1878) 16 Op. Atty-Gen. 143.

Treasury notes destroyed by fire.—A superintendent of a mint is liable on his bond for the destruction of treasury notes in his custody, and it is no defense in an action therefor that such notes were destroyed by fire without any fault or negligence on his part, where his bond required him to keep safely such moneys as came into his hands and to account therefor. Nor can such action be met by the suggestion that the government if it so elects can replace the notes destroyed by other notes and thus make itself whole less the cost of printing new notes. *Smythe v. U. S.*, (1903) 188 U. S. 156, *affirming* (C. C. A. 1901) 107 Fed. Rep. 376.

Money stolen.—It is not a good defense to an action on the bond of a paymaster in the army for not paying over or accounting

for public moneys that came into his hands, that, without any want of proper care and diligence on his part, a certain part of the money had been stolen from him. *U. S. v. Dashiell*, (1866) 4 Wall. (U. S.) 182.

A bond of a receiver of public moneys conditioned for the faithful performance of his duties and that he shall keep safely and pay over all public money fixes an absolute liability to pay over such moneys, and he is not excused by the fact that such moneys are stolen from him without fault or negligence on his part and notwithstanding the fact that he had used ordinary care and diligence in keeping it. *U. S. v. Prescott*, (1845) 3 How. (U. S.) 578.

Money taken by rebels.—In *U. S. v. Keebler*, (1869) 9 Wall. (U. S.) 83, in an action upon a bond of a postmaster conditioned for the safe-keeping of public money at any time in his custody, the court said: "We cannot concede that a man who as a citizen owes allegiance to the United States and as an officer of the government holds its money or property, is at liberty to turn over the latter to an insurrectionary government which only demands it by ordinances and drafts drawn on the bailee, but which exercises no force or threat of personal violence to himself or property in the enforcement of its illegal orders."

Money received in advance.—"A public officer who receives money in advance for the contingencies of his office is a receiver of public money within the meaning of this Act." *U. S. v. Lee*, (1824) 2 Cranch (C. C.) 462, 26 Fed. Cas. No. 15,585.

Manufacturer receiving stamps on credit.

—"A manufacturer to whom, pursuant to section 3425 of the Revised Statutes, the commissioner of internal revenue sells proprietary stamps on credit is not, in default of payment therefor, accountable for public money, and does not forfeit the commissions to which he is under that section entitled." *U. S. v. Goldback*, (1880) 102 U. S. 623.

Commissions forfeited on unsettled account only.—"Where an officer of the United States accountable for public money refuses to pay into the treasury the sum or balance reported to be due upon the adjustment of his account, the accounting officers of the treasury are authorized to add to such sum only the commissions due the officer on such unsettled account. The statute does not contemplate the forfeiture of all commissions paid such officer upon settled accounts during the whole term of his previous service." *U. S. v. Wendell*, (1864) 2 Cliff. (U. S.) 340, 28 Fed. Cas. No. 16,666.

Interest on refusal to pay only.—"The imposition of interest is made by the statute dependent on the refusal of the delinquent to pay into the treasury the sum or balance reported to be due." *U. S. v. Collier*, (1855) 3 Blatchf. (U. S.) 325, 25 Fed. Cas. No. 14,833.

"Commissions on customs were intended as a compensation for a faithful performance of the duty of the officer collecting the revenue, and are not due to an officer who has not collected nor received such revenue, but who, in violation of his duty, devolved its collection on his successor." (1850) 5 Op. Atty-Gen. 278.

Sec. 3625. [Distress warrant.] Whenever any collector of the revenue, receiver of public money, or other officer who has received the public money before it is paid into the Treasury of the United States, fails to render his account, or pay over the same in the manner or within the time required by law, it shall be the duty of the proper Auditor to cause to be stated the account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the Solicitor of the Treasury, who shall issue a warrant of distress against the delinquent officer and his sureties, directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they, or either of them, reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 592; Act of May 29, 1830, ch. 153, 4 Stat. L. 414.

As originally enacted, after the words "within the time required by law," the section read "it shall be the duty of the First Comptroller of the Treasury," etc. It was amended by Act of Feb. 27, 1874, ch. 69, 19 Stat. L. 249, by adding after such last quoted words, the words "or the commissioner of customs, as the case may be." It was again amended by Act of July 31, 1894, ch. 174, sec. 4, 28 Stat. L. 206, by substituting the words "proper Auditor" for the words "First

Comptroller of the Treasury or the Commissioner of Customs, as the case may be," so as to make the section read as above given.

The constitutional principles were discussed and settled in *Murray v. Hoboken Land, etc. Co.*, (1855) 18 How. (U. S.) 272. Under the Act of 1820 (3 Stat. L. 592) authorizing the secretary of the treasury to issue a distress warrant against defaulting collectors land had been sold. The proceeding was attacked as unconstitutional because no hearing was given the defendant and no trial by jury. It was said to be conferring judicial power upon other than the courts. The law, after

the most full consideration, was held to be valid. It was shown that like proceedings had immemorially existed in England and since Magna Charta. The distinction was between proceedings to collect public dues and suits for enforcing private rights.

This Act is not inconsistent with that part of the Constitution which prohibits a citizen from being deprived of his liberty or property without due process of law. *Murray v. Hoboken Land, etc., Co.*, (1855) 18 How. (U. S.) 272.

Tested by English and state law.—"Tested by the common and statute law of England prior to the emigration of our ancestors and by the laws of many of the states at the time of the adoption of this amendment, the proceedings authorized by the Act of 1820 cannot be denied to be due process of law when applied to the ascertainment and recovery of balances due to the government from a collector of customs unless there exists in the Constitution some other provision which restrains Congress from authorizing such proceedings." *Murray v. Hoboken Land, etc., Co.*, (1855) 18 How. (U. S.) 272.

Purpose of and remedy against Act.—"The summary proceedings authorized by the recited Act were designed to secure the interests of the government in cases where the ordinary process of law would be inadequate. To provide for such emergencies the treasury department is vested with extraordinary and responsible powers; and to guard the rights of citizens from any abuse by the exercise of these powers a special authority is given to a district judge of the United States or one of the judges of this court to arrest the proceedings by granting an injunction." *U. S. v. Nourse*, (1832) 6 Pet. (U. S.) 470.

Executive not judicial power.—"It was an exercise of executive and not of judicial power according to the meaning of those words in the Constitution; and the privilege allowed to a collector to bring the question of his indebtedness before the courts of the United States is merely the consent of Congress to the suit, which is given in other classes of cases also." *Murray v. Hoboken Land, etc., Co.*, (1855) 18 How. (U. S.) 272.

The authority vested by this law in certain agents of the treasury, and all acts done in pursuance thereof, are purely ministerial. The statement or certificate authorized by the Act is not a judgment, and the warrant which coerces payment is not judicial process. They are ministerial acts (for otherwise they could not be sustained), and the general principles of construction require that the authority vested by the Act shall be strictly and literally pursued. *Ex p. Randolph*, (1833) 2 Brock. (U. S.) 447, 20 Fed. Cas. No. 11,558.

In *U. S. v. Taylor*, (1845) 3 McLean (U. S.) 539, 28 Fed. Cas. No. 16,440, it was said that "the statement of an account is a ministerial duty and also the issuing of a warrant, but the exercise of a judgment whether the case comes within the statute can scarcely be held a ministerial act. There are indeed many acts required to be done by treasury officers which partake more of a

judicial than a ministerial character. Treasury officers of necessity decide on claims on the evidence produced. * * * Practically the treasury officers who act upon these exercise judicial powers—not in form but in substance."

In effect judgment and execution.—"On the certificate of the balance due being given the United States may issue their warrant of distress, which is, in fact, an execution and levy for the amount certified on the person, goods, and the lands of the debtor. It has then all the effect of a judgment and the party indebted must get rid of it by showing that none or only a portion of the sum is due. *Armstrong v. U. S.*, (1833) Gilp. (U. S.) 399, 1 Fed. Cas. No. 548.

Necessary compliance with statute.—"Summary proceedings, being statutory, in derogation of the common-law mode of procedure, must conform strictly to the statute and the record must affirmatively disclose a compliance with the requisitions of the statute." *U. S. v. Ingate*, (1891) 48 Fed. Rep. 251.

Extent of power.—"A warrant is authorized to be issued against the defaulter without notice and without investigation, except merely turning to the books of the treasury and ascertaining the amount charged. And under the warrant the goods and chattels, lands and tenements, of the defaulter are taken and sold on short notice; and if the sale of these be insufficient to pay the amount due, his body is taken and imprisoned. And this warrant also authorizes the marshal to take the goods and chattels, lands and tenements, of the surety and sell them on short notice. Here is no inquiry as to the due execution of the bond by the surety or the amount which his principal owes. He may have claims of set-off against a part or the whole of the sum claimed." *U. S. v. Taylor*, (1845) 3 McLean (U. S.) 539, 28 Fed. Cas. No. 16,440.

Justification of levy.—"Though a suit may be brought against the marshal for seizing property under such a warrant of distress and he may be put to show his justification, yet the action of the executive power in issuing the warrant, pursuant to the Act passed under the powers to collect and disburse the revenue granted by the Constitution, is conclusive evidence of the facts recited in it, and of the authority to make the levy." *Murray v. Hoboken Land, etc., Co.*, (1855) 18 How. (U. S.) 272.

The decision of the proper auditor is conclusive upon the executive branch of the government and the President does not possess the power to enter into the examination of the correctness of the account for the purposes of taking any measures to repair the errors which the accounting officers appointed by law may have committed. The party who supposes that justice has been done to him must seek relief in court when a suit is brought against him or may bring his claims to the consideration of Congress. (1832) 2 Op. Atty-Gen. 507.

Real estate taken on judgment.—"Where real estate is acquired by the United States

by virtue of proceedings under their provisions against a collector of internal revenue, such real estate is not to be understood as acquired 'in payment of debts arising under

the laws relating to internal revenue,' within the meaning of section 3208." (1878) 16 Op. Atty.-Gen. 146.

Sec. 3626. [*Contents of warrant.*] The warrant of distress shall specify the amount with which such delinquent is chargeable, and the sums, if any, which have been paid. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 592; Act of May 29, 1830, ch. 153, 4 Stat. L. 414.

Sec. 3627. [*Execution against officer.*] The marshal authorized to execute any warrant of distress shall, by himself or by his deputy, proceed to levy and collect the sum remaining due, by distress and sale of the goods and chattels of such delinquent officer; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town and county where the goods or chattels were taken, or in the town or county where the owner of such goods or chattels may reside. If the goods and chattels be not sufficient to satisfy the warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until discharged by due course of law. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 593.

Constitutional oath.—"The article of the Constitution requiring an oath or affirmation for a warrant, has no application to proceedings for the recovery of debts, where no search warrant is used." *Murray v. Hoboken Land, etc., Co.*, (1855) 18 How. (U. S.) 272.

Habeas corpus.—"The Act of Congress authorizing the writ of habeas corpus to be issued 'for the purpose of inquiring into the cause of commitment,' applies" to cases of commitment under this Act. *Ex p. Randolph*, (1833) 2 Brock. (U. S.) 447, 20 Fed. Cas. No. 11,558.

Sec. 3628. [*Execution against surety.*] If the delinquent officer absconds, or if goods and chattels belonging to him cannot be found sufficient to satisfy the warrant, the marshal or his deputy shall proceed, notwithstanding the commitment of the delinquent officer, to levy and collect the sum which remains due by such delinquent, by the distress and sale of the goods and chattels of his sureties; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town or county where the goods or chattels were taken, or in the town or county where the owner resides. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 593.

Effect on sureties.—When the surety signed an officer's bond he did so in contemplation of the statute providing for these extraordinary remedies and thus consented to the government employing the remedies therein provided for collecting any debt to it arising from the officer's default. *U. S. v. Ingate*, (1891) 48 Fed. Rep. 251.

Return of marshal as evidence.—"The return of the marshal that he had levied on lands by virtue of such warrant is at least *prima facie* evidence that the levy was not irregular by reason of the existence of goods and chattels of the collector subject to his process." *Murray v. Hoboken Land, etc., Co.*, (1855) 18 How. (U. S.) 272.

Sec. 3629. [*Levy to be a lien.*] The amount due by any delinquent officer is declared to be a lien upon the lands, tenements, and hereditaments of such officer and his sureties, from the date of a levy in pursuance of the warrant of distress issued against him or them, and a record thereof made in the office of the clerk of the district court of the proper district, until the same is discharged according to law. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 593.

Sec. 3630. [*Sale of lands regulated.*] For want of goods and chattels of a delinquent officer, or his sureties, sufficient to satisfy any warrant of distress issued pursuant to the foregoing provisions, the lands, tenements, and hereditaments of such officer and his sureties, or so much thereof as may be necessary for that purpose, after being advertised for at least three weeks in not less than three public places in the county or district where such real estate is situate, before the time of sale, shall be sold by the marshal of such district or his deputy. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 593.

Sec. 3631. [*Conveyance of lands.*] For all lands, tenements, or hereditaments sold in pursuance of the preceding section, the conveyance of the marshal or his deputy, executed in due form of law, shall give a valid title against all persons claiming under such delinquent officer or his sureties. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 593.

Sec. 3632. [*Disposal of surplus.*] All moneys which may remain of the proceeds of sales, after satisfying the warrant of distress, and paying the reasonable costs and charges of the sale, shall be returned to such delinquent officer or surety, as the case may be. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 593.

Sec. 3633. [*Failure of disbursing officer to account — penalty.*] Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the Department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the proper Auditor, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in the six preceding sections. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 594; Act of May 29, 1830, ch. 153, 4 Stat. L. 414.

This section was amended by the Act of July 31, 1894, ch. 174, sec. 4, 28 Stat. L. 206, by substituting the words "proper Auditor" for the words "First or Second Comptroller of the Treasury," appearing in the section as originally enacted.

To whom applicable. — "The Act does not apply in sound construction to every commissioned officer of the army or navy of the United States, to whose hands any public money may be intrusted, but only to those regularly appointed disbursing officers, who have given official bonds with sureties for the faithful discharge of the duties of their office; it does not embrace a mere acting purser in the navy." *Ex p. Randolph*, (1833) 2 Brock. (U. S.) 447, 20 Fed. Cas. No. 11,558.

Bill in equity. — No such remedies as are herein provided can be pursued in a bill in

equity for a discovery and to set aside fraudulent conveyances. *U. S. v. Ingate*, (1891) 48 Fed. Rep. 251.

Accounts settled. — "The account of an acting purser having been once stated and settled at the treasury department, the law invests the auditor with no power to open and resettle it of his own mere authority. The Act creates a special and limited jurisdiction, and after the accounts of any of the class of officers on whom it was intended to act have been adjusted, however erroneously, that special jurisdiction is *functus officio*, and any process issued upon a resettlement of such accounts is absolutely null and void." *Ex p. Randolph*, (1833) 2 Brock. (U. S.) 447, 20 Fed. Cas. No. 11,558.

"In case of an erroneous settlement a bill in equity would lie to surcharge and falsify as in the case of a settled account between individuals." *Ex p. Randolph*, (1833) 2 Brock. (U. S.) 447, 20 Fed. Cas. No. 11,558.

Sec. 3634. [*Extent of application of provision for distress warrants.*] All the provisions relating to the issuing of a warrant of distress against a delin-

quent officer shall extend to every officer of the Government charged with the disbursement of the public money, and to their sureties, in the same manner and to the same extent as if they were herein described and enumerated. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 594.

Sec. 3635. [*Postponement of proceedings for non-accounting allowed.*] With the approval of the Secretary of the Treasury, the institution of proceedings by a warrant of distress may be postponed, for a reasonable time, in cases where, in his opinion, the public interest will sustain no injury by such postponement. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 594.

Sec. 3636. [*Injunction to stay distress warrant.*] Any person who considers himself aggrieved by any warrant of distress issued under the foregoing provisions may prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and extent of the injury of which he complains; and thereupon the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. But no injunction shall issue till the party applying for it gives bond, with sufficient security, in a sum to be prescribed by the judge, for the performance of such judgment as may be awarded against him; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of the warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States; and if, upon dissolving the injunction, it appears to the satisfaction of the judge that the application for the injunction was merely for delay, the judge may add to the lawful interest assessed on all sums found due against the complainant such damages as, with such lawful interest, shall not exceed the rate of ten per centum a year. Such injunction may be granted or dissolved by the district judge either in or out of court. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. 595.

Power of Congress to allow suit.— Though no suit can be brought against the United States without the consent of Congress, yet Congress may consent to have a suit brought to try the question whether the collector be indebted, that being a subject capable of judicial determination and may empower a court to act on that determination and restrain the levy of the warrant of distress within the limits of the debt judicially found to exist. *Murray v. Hoboken Land, etc., Co.*, (1855) 18 How. (U. S.) 272.

Who may prefer bill of complaint.— "The sections which regulate the proceedings of the treasury department on the warrant, contemplate the officer against whom it may be issued and confine it to him; but when the legislature turns its attention to the individual against whom it may issue, the language of the law is immediately changed. The word person is substituted for officer. * * * The character of the individual against whom the warrant may be issued is entirely disregarded by this part of the Act. Be he whom he may, an officer or not an officer, a debtor or not a debtor; if the war-

rant be levied on his person or property, he is permitted to appeal to the laws of his country and to bring his case before the district judge to be adjudicated by him." *U. S. v. Nourse*, (1835) 9 Pet. (U. S.) 8.

Jurisdiction limited by Act.— "As the proceedings on this injunction in regard to the merits of the case are to be the same as in other cases of injunction and may be had before the judge out of court, and as the District Court possesses no chancery powers, the jurisdiction given by this Act must be limited by it." *U. S. v. Nourse*, (1832) 6 Pet. (U. S.) 470.

Power in court, not judge.— "The Act of Congress prescribing the mode of relief against a treasury warrant of distress confers a power upon the court and not upon the judge as an individual." *Porter v. U. S.*, 2 Paine (U. S.) 313, 19 Fed. Cas. No. 11,290.

Powers of district judge.— The Act "gives to the district judge a special jurisdiction which he may exercise at his discretion— while holding the District Court or at any other time. Ordinarily, as district judge, he has no chancery powers; but in proceeding under this statute, he is governed by the rules of chancery which apply to injunctions,

except no answer to the bill is required by the government." *U. S. v. Cox*, (1837) 11 Pet. (U. S.) 182.

President's power to interfere.—Where proceedings on a claim by the government have been vexatious and oppressive and the suit repeatedly dismissed and again renewed, and where the defendant has been harassed by tedious and expensive litigation until he has been deprived of important testimony by the death of important witnesses, the President may unquestionably interfere and compel the officer of the government in charge of the suit to prepare for and proceed to trial without delay; but it is not in the power of the executive to afford other relief to the defendant, such as a dismissal of the suit. (1832) 2 Op. Atty.-Gen. 507.

Extent of injunction and effect of decision.—The District Court has jurisdiction to enjoin, in whole or in part, the execution of a treasury warrant of distress whether the person complaining was or was not an officer against whom such a warrant might lawfully be issued; its decision is final and bars an action on the account which formed the subject-matter of the warrant and of the bill of complaint. *U. S. v. Nourse*, (1835) 9 Pet. (U. S.) 8.

Whole or part of demand.—"The judge who allows the injunction may extend it to the whole or a part of the demand of the government as the equity of the case may require." *U. S. v. Nourse*, (1832) 6 Pet. (U. S.) 470.

What must be shown by complainant.—The bill of complaint of a debtor against whom a warrant of distress has been issued is in the nature of a motion to stay execution on a judgment, and the beginning and conclusion of the argument are with the debtor. The district attorney has nothing to show but his warrant of distress, which is *prima facie* evidence of the debt and is already in possession of the court, being in the hands of its officer. The question before the court relates only to the continuance or removal of this warrant, not to the final settle-

ment of the debt or balance between the parties. It is incumbent on the complainant to show that there are sufficient grounds for its removal in whole or in part. In this he is the actor. *Armstrong v. U. S.*, (1833) Gilp. (U. S.) 399, 1 Fed. Cas. No. 548.

Subsequent suit for same demand.—Judgment in favor of the proceedings under the treasury warrant of distress is a conclusive bar to a subsequent suit by the United States for the same demand on the general principle that the judgment of a court of competent jurisdiction, while unreversed, concludes the subject-matter as between the same parties. They cannot bring it again into litigation. *U. S. v. Nourse*, (1835) 9 Pet. (U. S.) 8.

Appeal or writ of error.—The general law allowing appeals cannot be so construed as to enable the Supreme Court by appeal or writ of error to revise the proceedings of the district judge under this statute. *U. S. v. Cox*, (1837) 11 Pet. (U. S.) 182.

In *Porter v. U. S.*, 2 Paine (U. S.) 313, 19 Fed. Cas. No. 11,290, however, it was held that the decision of the district judge awarding a perpetual injunction against a treasury warrant of distress is a final decree within the Act of Congress which allows an appeal from all final judgments or decrees of a District Court to the Circuit Court.

Bill of review.—On the hearing of this case a certain amount was adjudged to be due the United States, which was paid by the defendant. The United States subsequently filed their petition for leave to file a bill of review, alleging that new and other evidence had been discovered since the hearing which it was not in their power to produce at that time. This application was refused because, as stated in the statement of the case, the Act did not vest in the District Court general and unlimited equity powers but merely gave a special authority which having been executed could not be reviewed by that court. *U. S. v. Bullock*, 6 Pet. (U. S.) 486, note.

Sec. 3637. [*Proceedings on distress in circuit court.*] When the district judge refuses to grant an injunction to stay proceedings on a distress-warrant, as aforesaid, or dissolves such injunction after it is granted, any person who considers himself aggrieved by the decision in the premises may lay before the circuit justice, or circuit judge of the circuit within which such district lies, a copy of the proceeding had before the district judge; and thereupon the circuit justice or circuit judge may grant an injunction, or permit an appeal, as the case may be, if, in his opinion, the equity of the case requires it. The same proceedings, subject to the same conditions, shall be had upon such injunction in the circuit court as are prescribed in the district court. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 595; Act of April 10, 1869, ch. 22, 16 Stat. L. 44.

Only manner of appeal.—"As this special mode is pointed out by which an appeal from the decision of the district judge to the Circuit Court may be taken, it negatives the right to an appeal in any other manner." *U. S. v. Nourse*, (1832) 6 Pet. (U. S.) 470,

reversing (1831) 4 Cranch (C. C.) 151, 27 Fed. Cas. No. 15,901.

Right of government to appeal.—"The government consents to have the summary proceedings instituted by its officers arrested on certain conditions and gives a right to the aggrieved party to carry his complaint to the Circuit Court, but no appeal is provided for or seems to be contemplated in behalf

of the government. Having submitted itself to the special jurisdiction created by the Act, it is as much bound by the decision of the judge as an individual, and can claim no exemption from the decision, by appeal or otherwise, which does not belong equally to the other party, independent of any special provision." *U. S. v. Nourse*, (1832) 6 Pet.

(U. S.) 470, *reversing* (1831) 4 Cranch (C. C.) 151, 27 Fed. Cas. No. 15,901.

"As no appeal is given to the government in the statute by writ of error or otherwise, either to the Circuit or the Supreme Court, the decree of the district judge in favor of the defendant must be held final." *U. S. v. Cox*, (1837) 11 Pet. (U. S.) 162.

Sec. 3638. [*Rights of United States reserved.*] Nothing contained in the provisions of this Title relating to distress-warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands. [R. S.]

Act of May 15, 1820, ch. 107, 3 Stat. L. 596:

Sec. 3639. [*Duties of officers as custodians of public moneys.*] The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land-offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 60; Act of July 3, 1852, ch. 54, 10 Stat. L. 12; Act of March 3, 1857, ch. 114, 11 Stat. L. 249; Act of April 21, 1862, ch. 59, 12 Stat. L. 382; Act of March 3, 1863, ch. 96, 12 Stat. L. 770; Act of July 4, 1864, ch. 224, 13 Stat. L. 383; Act of Feb. 19, 1869, ch. 33, 15 Stat. L. 271.

What duties included.—This statute intended to include such duties as naturally and ordinarily belong to the particular officer giving the bond, or have some obvious relation to such duty, and such as the sureties acquainted with the duties which are usually devolved by law upon the various public officers might reasonably be expected to contemplate at the time of executing the bond, as likely to be imposed upon their principal in case the exigencies of the government should require it; and not those duties which are usually imposed upon and more appropriately belong to an entirely different class of officers. *U. S. v. Cheeseman*, (1875) 3 Sawy. (U. S.) 424, 25 Fed. Cas. No. 14,790.

Officers of United States only.—"A clerk of the collector is not an officer of the United

States within the provisions of this section; and it is only to persons of that rank that the term public officer as there used applies. An officer of the United States can only be appointed by the President, by and with the advice and consent of the Senate, or by a court of law, or the head of a department. A person in the service of the government who does not derive his position from one of these sources is not an officer of the United States, in the sense of the Constitution." *U. S. v. Smith*, (1888) 124 U. S. 525.

Fiscal agents only.—"The officers specially designated in section 3639 are all charged by some Act of Congress with duties connected with the collection, disbursement, or keeping of the public moneys, or to perform other duties as fiscal agents of the government." *U. S. v. Smith*, (1888) 124 U. S. 525.

Postmasters included.—"This section designates postmasters as one class of fiscal agents of the government by whom public money may be collected, or into whose possession and custody it may otherwise be placed. It provides for the safe-keeping of

the public money and provides the mode for transferring or paying out the same." U. S. v. Mayers, (1896) 81 Fed. Rep. 150.

Additional duties or assistant treasurer.—It can hardly be supposed that Congress intended that the words "all other duties as fiscal agents of the government which may be imposed by this or any other Act" should include the duties of collectors of customs, receivers of land offices and postmasters in case Congress should after giving the bond see fit to impose the duties of such officers on the assistant treasurer. U. S. v. Cheeseman, (1875) 3 Sawy. (U. S.) 424, 25 Fed. Cas. No. 14,790.

Collector transporting money.—This statute does not require a collector to act as agent for the transporting of money without some law directly imposing such duty upon him, or authorizing the secretary to do so in his discretion. The collector acting as such agent is only a private carrier responsible for ordinary care and diligence. U. S. v. Adams, (1885) 24 Fed. Rep. 351.

"A clerk of a collector holding his position at the will of the latter, discharging only such duties as may be assigned to him by that officer, comes neither within the letter nor the purview of the statute." U. S. v. Smith, (1888) 124 U. S. 525.

"No clerk of a collector of customs is by section 3639 of the Revised Statutes charged with the safe keeping of the public moneys." U. S. v. Smith, (1888) 124 U. S. 525.

Money lost.—The assistant treasurer at New York and his sureties are liable on their bond for money lost although such money was lost without any wrongful conduct or neglect on the part of the assistant treasurer. U. S. v. Butterfield, (1874) 7 Ben. (U. S.) 412, 25 Fed. Cas. No. 14,703.

Liability of sureties.—"Subsequent to the passage of the Act of Congress of June 30, 1864, to provide internal revenue, etc. (13 Stat. L. 223), the assistant treasurer of the United States and treasurer of the branch mint at San Francisco gave an official bond in pursuance of sections 6 and 7 of the Act of Aug. 6, 1846, to provide for the reorganization of the treasury, etc. (9 Stat. L. 60), and conditioned in the language of said sections; also referring to the Act of May 23, 1850, providing for a bullion fund (9 Stat. L. 436), but not containing the conditions prescribed for stamp agent's bonds by section 170 of said Act of June 30, 1864, and not making any reference to said Act or duties. * * * Held that the sureties on said bond given as assistant treasurer and treasurer of 'he branch mint are not liable for any default of their principal occurring in the performance of the duties of stamp agent in pursuance of the provisions of said section 170 of said Act of June 30, 1864." U. S. v. Cheeseman, (1875) 3 Sawy. (U. S.) 424, 25 Fed. Cas. No. 14,790.

Sureties on a collector's bond are not responsible for moneys lost or stolen, while being transported by the collector. U. S. v. Adams, (1885) 24 Fed. Rep. 351.

Payment of checks of army paymasters.—"If the paymaster-general should neglect or refuse to place adequate funds to the credit of the proper paymasters, or, after so doing, should withdraw the funds, the United States would be released from obligation to pay their officers and soldiers." "The obligation created by checks issued in pursuance of this enactment is, therefore, a public and not a private obligation." (1865) 11 Op. Atty.-Gen. 216.

Sec. 3640. [*Transfer of moneys from depositaries to Treasury authorized.*]

The Secretary of the Treasury may, except as provided in the next section, transfer the moneys in the hands of any depositary of public moneys to the Treasury of the United States to the credit of the Treasurer; and he may transfer moneys in the hands of one depositary to any other depositary, as the safety of the public moneys and the convenience of the public service shall seem to him to require. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 61.

Contracts for transportation of moneys.—See PUBLIC CONTRACTS. *ante*. p. 90.

Bank's relation to United States.—When public money is deposited with a designated depository national bank, it is not there retained in kind as the property of the United States, of which the bank is made the custodian, but it becomes at once the property of the bank, is mingled with its other funds, is loaned or otherwise employed in the ordinary business of the corporation, and the bank instead of being a custodian of public money becomes a debtor to the United States as it does to other depositors on credit of individual deposits. Branch's Case, (1876) 12 Ct. Cl. 281.

It is manifest that designated depository

banks are not made part of the treasury of the United States proper, rendering the government liable for the safe keeping or payment of the money deposited therein to the credit of the customers of those institutions. As to its own public money intrusted thereto it relies upon the credit of the corporations and the securities taken as collateral, of which the one is subject to the vicissitudes of the institutions and the other to the care and vigilance of the public officers. Such money, or the credits therefor, when under the control of the treasurer of the United States and subject to his draft, may be considered as public money, although not in the treasury. Branch's Case, (1876) 12 Ct. Cl. 281.

Sec. 3641. [*Transfer of postal deposits.*] The Postmaster-General may transfer money belonging to the postal service between the Treasurer, assistant treasurers, and designated depositories, at his discretion, and as the safety of the public money and the convenience of the service may require. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 292.

Sec. 3642. [*Accounts of postal deposits.*] Every depository shall keep his account of the money paid to or deposited with him, belonging to the Post Office Department, separate and distinct from the account kept by him of other public moneys so paid or deposited. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 61.

Sec. 3643. [*Entry of each deposit, transfer, and payment.*] All persons charged by law with the safe-keeping, transfer, and disbursement of the public moneys, other than those connected with the Post-Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 63.

Sec. 3644. [*Public moneys in Treasury and depositories subject to draft of Treasurer.*] All moneys paid into the Treasury of the United States shall be subject to the draft of the Treasurer. And for the purpose of payments on the public account the Treasurer is authorized to draw upon any of the depositories, as he may think most conducive to the public interest and to the convenience of the public creditors. Each depository so drawn upon shall make returns to the Treasury and Post-Office Departments of all moneys received and paid by him, at such times and in such forms as shall be directed by the Secretary of the Treasury or the Postmaster-General. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 61.

Sec. 3645. [*Regulations for presentment of drafts.*] It shall be the duty of the Secretary of the Treasury to issue and publish regulations to enforce the speedy presentation of all Government drafts, for payment, at the place where payable, and to prescribe the time, according to the different distances of the depositories from the seat of Government, within which all drafts upon them, respectively, shall be presented for payment; and, in default of such presentation, to direct any other mode and place of payment which he may deem proper; but, in all these regulations and directions, it shall be his duty to guard, as far as may be, against those drafts being used or thrown into circulation as a paper currency or a medium of exchange. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 65.

Sec. 3646. [*Duplicates for lost or stolen checks authorized.*] Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositories of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of twenty-five hundred dollars. [R. S.]

Act of Feb. 2, 1872, ch. 12, 17 Stat. L. 29.

This section was amended by the Act of Feb. 16, 1885, ch. 123, 23 Stat. L. 306, by substituting in place of the words "one thousand," appearing in the section as originally enacted, the words "twenty-five hundred," as above given.

Extent of power. — The power given to an accounting officer to duplicate lost checks is not exclusive, nor does it affect the jurisdic-

tion of the Court of Claims. *Becker v. U. S.*, (1891) 26 Ct. Cl. 172.

When payment is made — Where a government check is lost or stolen the Revised Statutes do not require that payment must be postponed for three years or preclude a suit. They simply authorize disbursing officers to duplicate small checks in certain cases. *Becker v. U. S.*, (1891) 26 Ct. Cl. 172.

Sec. 3647. [*Duplicate check when officer who issued is dead.*] In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued, is dead, or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury shall prescribe, to state an account in favor of the owner of such original check for the amount thereof, and to charge such amount to the account of such officer or agent. [R. S.]

Act of Feb. 7, 1872, ch. 12, 17 Stat. L. 29.

Sec. 3648. [*Advances of public moneys prohibited.*] No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected. [R. S.]

Act of Jan. 31, 1823, ch. 9, 3 Stat. L. 723.

Advances to persons in naval service on distant stations. See NAVY, vol. 5, p. 326.

"The object of that section is not to preclude a payment in any case where the money has been actually earned and the government has received an equivalent therefor, but to prevent payments being made to contractors in advance of the performance of their contracts, whether for services or the supply of articles of any kind." (1885) 18 Op. Atty-Gen. 105.

Complete performance of contract. — This statute was intended to prevent a department from anticipating the performance of an agreement, by keeping the payment within the "value of the service," and does not apply when there is a complete performance although the government may not have received any benefit in consequence of the destruction of the subject-matter of the agreement. *McClure v. U. S.*, (1884) 19 Ct. Cl. 173.

But in (1894) 20 Op. Atty-Gen. 746, it was said that "the intent of this provision is that the United States shall not pay for any work or materials until it had received their benefit. It matters not that the work for which pay is asked has already been done."

President's right to delegate power. —

The power vested to make advances for the public service is one appertaining to the office of President, but is not an authority strictly personal and ministerial, to be exercised in every instance only by the person himself, by his own hand, and never in any respect to be delegated. *Williams v. U. S.*, (1843) 1 How. (U. S.) 290.

Advances by head of department. — As the President speaks and acts through the heads of departments in reference to the business committed to them, if money is advanced by the direction of the head of the proper department, in the absence of evidence, the direction of the President will be presumed. *U. S. v. Cutter*, (1856) 2 Curt. (U. S.) 617, 25 Fed. Cas. No. 14,911.

Expenses incident to the courts. — "Average estimates may be formed of the expenses incident to the courts, and instructions may be given by the President to the secretary of the treasury to make advances from time to time, either upon the basis of those estimates or upon statements or requisitions made by the marshals themselves, showing the necessity of advances to meet the public service." *Williams v. U. S.*, (1843) 1 How. (U. S.) 290.

Advances to contractors. — "It is the plain meaning of this law that no money shall be

advanced to contractors; that is, that no money shall be paid to them on account of their contracts before the actual performance of the service or the delivery of the articles stipulated for. And this not only forbids the contracting officer of the government to pay the money in advance but forbids him also to contract for such payment." (1862) 10 Op. Atty-Gen. 288.

Advances to public ministers.—"I think it is very clear from the terms of the Act," said Attorney-General Berrien, construing the prior Act, "that advances to foreign ministers were not in the contemplation of the legislature at the time of framing it. It is true that it forbids in general terms the advance of public money in any case whatever; but the subsequent specifications of the Act seem to me to restrict and qualify the generality of this inhibition. These authorize advances under the direction of the President of the United States to disbursing officers of the government when such advances are necessary to the prompt and faithful discharge of their public duties; and to persons in the military and naval service, who may be employed on distant stations, where the discharge of the pay and emoluments to which they are entitled cannot be regularly effected. Now, if the compensation to be made to the diplomatic agents of the government had been supposed to be embraced within the inhibitory provisions of this Act, it is difficult to conceive that Congress should have omitted to invest the President with a similar discretion in relation to these agents. Many cases will certainly occur in which it will be more difficult for the government to fulfil its engagements on the score of compensation to this latter class of agents than any which can be selected among the other. * * * If the Act we have been considering had been deemed applicable to the foreign intercourse fund, a corresponding provision would have been made, extending the executive discretion to this class of cases also." (1829) 2 Op. Atty-Gen. 204.

"The President being intrusted with the subject of the diplomatic intercourse of the United States with foreign nations, may in his discretion advance money to a minister going abroad over and above his outfit." (1829) 2 Op. Atty-Gen. 204.

"The President of the United States having the foreign intercourse fund under his direction may advance, to a minister going from the United States to a foreign country such part of his salary as he shall deem necessary to the proper fulfilment of public engagements in respect to him." (1823) 1 Op. Atty-Gen. 620.

Advances to marshal of District of Colum-

bia.—"The President of the United States has authority to order advances of money to be made by the secretary of the treasury to the marshal of the District of Columbia; and such advances may be presumed to have been made under the special direction of the President, and the sureties of the marshal are liable therefor." U. S. v. Williams, (1839) 5 Cranch (C. C.) 619, 28 Fed. Cas. No. 16,715, affirmed in (1843) 1 How. (U. S.) 290.

Acceptance of drafts before service rendered.—"The acceptance of a draft by the secretary of war drawn on him by army contractors before services contracted for were received or supplies to be furnished were delivered were mere accommodation loans of the credit of the United States without authority and therefore void. "But if these acceptances can be considered as payments," said Mr. Justice Miller, "they were payments in advance of the service rendered and supplies furnished—payments made before anything was due. They are in that view not only without authority of law, but are expressly forbidden." The Floyd Acceptances, (1868) 7 Wall. (U. S.) 666.

Part payments cannot be made upon government contracts unless the United States thereupon becomes the owner of the work paid for. (1894) 20 Op. Atty-Gen. 746.

Payment in full for the vessel in advance of its completion and acceptance is forbidden by this section, and hence a modification of the contract to this extent would be beyond the power of the secretary. (1885) 18 Op. Atty-Gen. 101.

Expenses of detecting counterfeiting.—"The President may allow the payment out of the judicial fund of extraordinary expenses incurred by the United States marshals, in executing the laws, by detecting and bringing to punishment persons engaged in counterfeiting treasury notes after such expenses have been specially taxed by the court in whose district the work has been done, yet * * * the secretary of the interior has no authority to make requisitions upon that fund for money to be advanced to marshals to be used in efforts to detect counterfeiters of that kind." (1862) 10 Op. Atty-Gen. 225.

Liability of sureties.—"The section requiring the especial direction of the President to authorize the advance of public moneys to disbursing officers is merely directory to the officers of the government and is not a qualification of the contract of the surety for such officer; and the surety is liable for the misappropriation of public money by his principal, though it was advanced to him contrary to this Act. U. S. v. Cutter, (1856) 2 Curt. (U. S.) 617, 25 Fed. Cas. No. 14,911.

Joint resolution providing for partial payments for work, and so forth, for vessels constructed under the direction of the Secretary of the Treasury.

[Res. No. 24, of May 5, 1894, 28 Stat. L. 582.]

[*Partial payments on contracts for construction of vessels for Treasury Department—lien.*] That the Secretary of the Treasury be, and he hereby is, authorized to make partial payments, from time to time, upon existing con-

tracts and all contracts hereafter made for the construction of vessels for the Treasury Department, but not in excess of seventy-five per cent of the amount of the value of the work already done; and that the contracts hereafter made shall provide for a lien upon such vessels for all advances so made: *Provided*, That nothing in this Joint Resolution shall be construed to hereafter authorize any partial payments, except on contracts stipulating for the same and then only in accordance with such contract stipulation. [*28 Stat. L. 582.*]

SEC. 11. [*Requisition for advances — warrants.*] Every requisition for an advance of money, before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve of this Act.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this Act, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy-five of the Revised Statutes; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required. And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury. * * * [*28 Stat. L. 209.*]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 31, 1894, ch. 174.

See further ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 894; TREASURY DEPARTMENT.

Sec. 3649. [*Examination of depositaries.*] The Secretary of the Treasury is authorized to cause examinations to be made of the books, accounts, and money on hand, of the several depositaries; and for that purpose to appoint special agents, as occasion may require, with such compensation, not exceeding six dollars per day and traveling expenses, as he may think reasonable, to be fixed and declared at the time of each appointment. The agent selected to make these examinations shall be instructed to examine as well the books, accounts, and returns of the officer, as the money on hand, and the manner of its being kept, to the end that uniformity and accuracy in the accounts, as well as safety to the public moneys, may be secured thereby. [*R. S.*]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 62.

Sale of public lands. — "The expenses incurred in the examination of the books, accounts, etc., of the receivers of public moneys, arising from the sale of the public lands by designated agents of the treasury department,

under the sub-treasury law, are chargeable to the appropriations for special agents to examine books, accounts, and money on hand in the several depositories under that law." (1851) 5 Op. Atty.-Gen. 377.

Sec. 3650. [*Examination of accounts of custodians of public moneys.*] In addition to the examinations provided for in the preceding section, it shall be the duty of each naval officer and surveyor, as a check upon the assistant treasurers, or the collector of the customs, of their respective districts; of each register of a land-office, as a check upon the receiver of his land-office; and of

the director and superintendent of each mint and branch-mint, when separate officers, as a check upon the treasurers, respectively, of the mints, or the persons acting as such, at the close of each quarter of the year, and as much oftener as they are directed by the Secretary of the Treasury to do so, to examine the books, accounts, returns, and money on hand, of the assistant treasurers, collectors, receivers of land-offices, treasurers of the Mint and each branch-mint, and persons acting as such, and to make a full, accurate, and faithful return of their condition to the Secretary of the Treasury. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 62.

Sec. 3651. [*Exchange of funds restricted.*] No exchange of funds shall be made by any disbursing officer or agent of the Government, of any grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes, and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the moneys so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be the duty of the head of the proper Department immediately to suspend from duty any disbursing officer or agent who violates the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the Secretary, to the end that such officer or agent may be promptly removed from office, or restored to his trust and the performance of his duties, as the President may deem just and proper. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 64; Act of Feb. 22, 1862, ch. 33, 12 Stat. L. 345; Act of July 11, 1862, ch. 142, 12 Stat. L. 532; Act of March 3, 1863, ch. 73, 12 Stat. L. 710; Act of June 3, 1864, ch. 106, 13 Stat. L. 106.

The term "public money," as used in the statutes of the United States, ordinarily means the money of the government, received from the public revenues, or intrusted to its officers charged with the duty of receiving, keeping, or disbursing the same wherever it may be. It does not include the money of states, counties, cities, and towns, although with reference to those governments and municipalities such funds in other connections would be deemed public money. Nor does it include money in the hands of the marshals, clerks, and other officers of court held by them under authority of law to await the judgment of the court in relation to the ownership thereof. *Branch's Case*, (1876) 12 Ct. Cl. 281.

Exchanging one medium for another.—"The first of these clauses forbids any exchange of funds by disbursing officers or agents of the government other than an exchange of them for gold, silver, United States notes, and national bank notes, but gives no authority for the exchange of either of these moneys for the others." (1879) 16 Op. Atty-Gen. 381.

Disbursing officer as bailor.—"The second clause * * * treats every disbursing officer not as a debtor to the United States, but as a bailor of the funds of the United States, who is required to pay them out and necessarily to keep them in the precise form in which he receives them." (1879) 16 Op. Atty-Gen. 381.

Exchange of gold and silver for U. S. notes.—"In view of the fact that the second clause makes it the imperative duty of every disbursing officer to make payments in the moneys which he receives, and that no provision is found permitting him to exchange gold and silver for other moneys, I am of opinion," said Attorney-General Chas. Devens, "that the clause in question presents an obstacle to your wish to exchange gold and silver coin for United States notes through the depositaries of the United States, which cannot be avoided under the present legislation." (1879) 16 Op. Atty-Gen. 381.

Exchange of drafts.—"The third clause contemplates that under certain circumstances (as where drafts are furnished the disbursing officer) he may exchange the means in his hands for gold and silver at par; but no authority is given to make any other exchange." (1879) 16 Op. Atty-Gen. 381.

Sec. 3652. [*Premium on sales of public moneys to be accounted for.*] No officer of the United States shall, either directly or indirectly, sell or dispose of to any person, for a premium, any Treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 65.

Sec. 3653. [*Expenses of fiscal agents.*] The officers, respectively, whose duty it is made by this Title to receive, keep, or disburse the public moneys, as the fiscal agents of the Government, may be allowed any necessary additional expenses for clerks, fire-proof chests or vaults, or other necessary expenses of safe-keeping, transferring, or disbursing the moneys; but all such expenses of every character shall be first expressly authorized by the Secretary of the Treasury, whose directions upon all the above subjects, by way of regulation and otherwise, so far as authorized by law, shall be strictly followed by all the officers. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 62.

[SEC. 1.] [*Expenses of fiscal agents—appropriation, how expended.*] * * * For contingent expenses under the requirements of section thirty-six hundred and fifty-three of the Revised Statutes of the United States, for the collection, safe-keeping, transfer, and disbursement of the public money, and for transportation of notes, bonds, and other securities of the United States, * * * . And hereafter no part of the money appropriated for the purposes mentioned in this paragraph shall be expended for clerical services or payment of employees of any nature or grade. * * * [22 Stat. L. 312.]

This is from the Sundry Civil Appropriation Act of Aug. 7, 1882, ch. 433.

Sec. 3654. [*Limit upon extra compensation for making disbursements.*] No extra compensation exceeding one-eighth of one per centum shall in any case be allowed or paid to any officer, person, or corporation for disbursing moneys appropriated to the construction of any public building. [R. S.]

Act of March 3, 1869, ch. 123, 15 Stat. L. 312.

See, however, following text.

As a limit to compensation only.—“This Act does not assume to fix the compensation to be allowed to disbursing agents, but only to indicate the limits beyond which compensation should not go.” (1889) 19 Op. Atty.-Gen. 425.

Extra compensation.—This section does not authorize the payment of extra compensation to an officer of the engineer department for disbursement of public moneys while superintending public works. Compensation for such services is forbidden by R. S. sec. 1153. (1889) 19 Op. Atty.-Gen. 425.

Discretion of secretary.—“The Act of March 3, 1869 (sec. 3654, R. S.), while lim-

iting the compensation to be allowed for the disbursement of moneys to an amount not exceeding one-eighth of one per centum, left it discretionary with the secretary to allow any amount within that limit. The Act of March 3, 1875, extended the limit to three-eighths of one per centum. Its effect is not to fix the amount of compensation to be allowed for disbursing moneys, but to ‘limit’ it. It enlarges the discretion of the secretary by enabling him to allow as compensation for such services any amount not exceeding the increased per centum therein designated. He may under this Act, as he might have done under the former Act, allow a less per centum than that specified in the statute, but not a greater.” (1881) 17 Op. Atty.-Gen. 219.

Increased maximum compensation.—Where at the time a person received his appoint-

ment as disbursing agent the maximum compensation allowable by law for his services in that capacity was one-eighth of one per centum, "his letter of appointment must be deemed to contemplate that (viz., one-eighth of one per centum) as the measure of his

compensation. When afterwards the maximum was increased, it was discretionary with the secretary to allow an increase of compensation either up to the new limit imposed or at any intermediate rate." (1881) 17 Op. Atty.-Gen. 219.

SEC. 4. [Compensation for disbursements for public buildings.] * * *
That the provisions contained in the act approved March third eighteen hundred and sixty-nine, entitled "An act making appropriations to supply deficiencies in the appropriations for the service of the Government for the fiscal year ending June thirtieth, eighteen hundred and sixty-nine, and for other purposes," limiting the compensation to be allowed for the disbursement of moneys appropriated for the construction of any public building was intended and shall be deemed and held to limit the compensation to be allowed to any disbursing officer who disburses moneys appropriated for and expended in the construction of any public building as aforesaid to three-eighths of one per centum for said services. * * * [18 Stat. L. 415.]

This is from the Deficiencies Appropriation Act of March 3, 1875, ch. 131. The provisions of the Act of March 3, 1869, ch. 123, 15

Stat. L. 312, here referred to were incorporated into Revised Statutes as section 3654.

[SEC. 1.] [Compensation for disbursements for public buildings and grounds outside Washington, D. C.] * * * Any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed. * * * [22 Stat. L. 306.]

This is from the Sundry Civil Appropriation Act of Aug. 7, 1882, ch. 433.

Extent of Act.—This provision probably was not intended as general legislation or to extend beyond the appropriations authorized by the Act itself, and certainly was not intended to be so far retroactive as to fix the

compensation of former disbursing officers in all past transactions of the government. *Meriwether v. U. S.*, (1887) 22 Ct. Cl. 332.

Officers included.—This Act does not extend to one of the disbursing clerks in the office of the secretary of the treasury. *Bartlet v. U. S.*, (1890) 25 Ct. Cl. 389.

Sec. 3655. [Compensation of depositaries.] The depositaries which have been or may be designated by the Secretary of the Treasury to receive payments and give receipts or certificates of deposit for public money from miscellaneous sources, other than the transactions of the respective offices for which they are or may be commissioned, may be paid in full compensation for receiving, safely keeping, and paying out such public money, at the rate of one-half of one per centum for the first one hundred thousand dollars; one-fourth of one per centum for the second one hundred thousand dollars; and one-eighth of one per centum for all sums over two hundred thousand dollars. Any sum which may have been allowed to such depositary for rent or any other contingent expenses in respect to the custody of such public money shall be deducted from such compensation, before any payment shall be made therefor. [R. S.]

Act of March 2, 1853, ch. 89, 10 Stat. L. 172.

Commissions on transfer deposits.—A designated depositary of public moneys is not

entitled to commissions on transfer deposits. *McLean's Case*, (1872) 8 Ct. Cl. 217. See also *Luce's Case*, (1874) 10 Ct. Cl. 229.

A surveyor of customs acting as designated

depository of public moneys is not entitled to commissions upon "transfer deposits," i. e., upon moneys transferred to him by other departments of the treasury as distinguished

from moneys paid to him as the representative of the treasury. *Neff's Case*, (1872) 8 Ct. Cl. 233. See also *Luce's Case*, (1874) 10 Ct. Cl. 229.

Sec. 3656. [*Limit upon compensation.*] No compensation shall be allowed for the services mentioned in the preceding section, when the emoluments of the office of which the designated depository is in commission amount to the maximum compensation fixed by law; nor shall the amount allowed to any of the designated depositaries for such services, when added to the emoluments of the office of which he is in commission, be more than sufficient to make the maximum compensation fixed by law. [R. S.]

Act of March 2, 1853, ch. 89, 10 Stat. L. 172.

When compensation is allowed. — If the depository receives from the office for which he is commissioned its maximum compensation, he is to be allowed nothing for his service as depository. But if he receives from

the office for which he is commissioned less than its maximum compensation, he is to be allowed for his services as depository so much of \$1,500 as will make up such maximum compensation. *McLean's Case*, (1872) 8 Ct. Cl. 217. See also *Luce's Case*, (1874) 10 Ct. Cl. 229.

[SEC. 1.] [*Limit upon compensation of certain designated depositaries.*]
* * * For compensation to designated depositaries at Buffalo, New York; Louisville, Kentucky; and Pittsburgh, Pennsylvania, for receiving, safely keeping, and paying out public money, * * * *Provided*, That no compensation shall be allowed for the above services when the emoluments of the office of which said designated depository is in commission amounts to the maximum compensation fixed by law; nor shall the amount allowed to any of said designated depositaries for such services, when added to the emoluments of the office of which he is in commission, be more than sufficient to make the maximum compensation fixed by law: *And provided further*, That the whole allowance to any designated depository for such service shall not exceed one thousand five hundred dollars per annum. * * * [18 Stat. L. 96.]

This is from the Legislative, Executive, and Judicial Appropriation Act of June 20, 1874, ch. 328. This limitation is repeated in the Act of March 3, 1875, ch. 129, 18 Stat. L. 355.

The discontinuance of the depositories at Buffalo, Santa Fé, and Pittsburgh was directed by Act of Aug. 15, 1876, ch. 287, sec. 1. See *ante*, p. 541.

Sec. 3657. [*Collectors to act as disbursing agents.*] The collectors of customs in the several collection-districts are required to act as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of custom-houses, court-houses, post-offices, and marine hospitals; with such compensation, not exceeding one-quarter of one per centum, as the Secretary of the Treasury may deem equitable and just. [R. S.]

Act of June 12, 1858, ch. 154, 11 Stat. L. 327.

Relation to other statutes. — "The statute first quoted" (R. S. 3657), said Attorney-General W. H. H. Miller, "seems to make it obligatory that such moneys should be disbursed by the collector of the district in which the public building was being erected. Such a rule would sometimes involve great inconvenience. Accordingly, some years later, by section 3658, R. S., it was provided that in case the building was being erected at a place where there was no collector, the secretary of the treasury might appoint some other disbursing agent, no limitation being

made as to the person. It will be observed that under the first section no appointment by the secretary was necessary; the law fixed upon the collector as the disbursing agent, without any special designation by the secretary. Three years after the enactment of this second statute a new statute was enacted (R. S. 255), giving to the secretary of the treasury the authority to designate any bonded officer of the United States to be disbursing agent in such case. This law is general and without limitation as to place. It applies to 'all moneys appropriated for the construction of public buildings authorized by law, within the district of such officer.' This law is not

inconsistent with either of the two preceding provisions in any such sense that all of them cannot stand together. It modified the first provision (sec 3657) to this extent, that it is no longer imperative that the collector shall be the disbursing agent for a building, even at the place of his location." (1889) 19 Op. Atty-Gen. 393.

"In the absence of any special designation the collector would act as such disbursing agent." (1889) 19 Op. Atty-Gen. 393.

Commissions as set-off. — "Sums charged by a collector as commissions on sums disbursed for the erection of a marine hospital cannot, when they have not been disallowed by the accounting officers of the treasury, be allowed in set-off against a suit by the United States against such collector for sums alleged to be due from him." U. S. v. Austin, (1864) 2 Cliff. (U. S.) 325, 24 Fed. Cas. No. 14,480.

Sec. 3658. [*Appointment of special disbursing agents, where no collector is authorized.*] Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just. [R. S.]

Act of July 28, 1866, ch. 302, 14 Stat. L. 341.

Collectors of internal revenue as disbursing agents. See INTERNAL REVENUE, vol. 3, p. 559.

Postmasters as disbursing agents. See POSTAL SERVICE, vol. 5, p. 780.

Who may be appointed. — "It is competent for the secretary to designate the collector or any other bonded officer to act as such disbursing agent in any case." (1889) 19 Op. Atty-Gen. 393.

Appointment of person not under bond. — Where one not holding any office under the

United States requiring him to give bond was appointed an agent to disburse funds appropriated to build the custom house and post-office building, in the city of Philadelphia, it was held that in view of the provisions of sections 3657, 3658, and 255, R. S., the appointment was improvidently made; that he was not lawfully empowered to receive or disburse the public funds placed in his hands, and that under existing legislation he is not entitled to any compensation for his services as such disbursing agent. (1881) 17 Op. Atty-Gen. 124.

Sec. 255. [*Appointment of disbursing agent for construction of public buildings.*] The Secretary of the Treasury may designate any officer of the United States, who has given bonds for the faithful performance of his duties, to be disbursing agent for the payment of all moneys appropriated for the construction of public buildings authorized by law within the district of such officer. [R. S.]

Act of March 3, 1869, ch. 122, 15 Stat. L. 301, 306.

When secretary may designate. — The secretary of the treasury cannot designate an officer in the city of Washington to be a disbursing agent in another place under this section, nor where there is a collector of customs under section 3658. Bartlett v. U. S., (1890) 25 Ct. Cl. 389.

Direction of secretary. — A disbursing officer holding an office created by statute having an annual salary but no prescribed specific duties is bound to disburse such money and in such manner as the secretary may direct. Bartlett v. U. S., (1890) 25 Ct. Cl. 389.

[SEC. 1.] [*Disbursements for Botanic Garden and for joint committee on library.*] * * * Botanic Garden: The Superintendent of the Library building and grounds shall hereafter disburse all appropriations made for and on account of the Botanic Garden, and shall also disburse all appropriations authorized to be expended by the Joint Committee on the Library. [30 Stat. L. 136.]

This is from the Deficiencies Appropriation Act of July 19, 1897, ch. 9. See further LIBRARY OF CONGRESS, vol. 4, p. 796.

Sec. 3659. [*Investment of trust funds.*] All funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise

required by treaty, shall be invested in stocks of the United States, bearing a rate of interest not less than five per centum per annum. [R. S.]

Act of Sept. 11, 1841, ch. 25, 5 Stat. L. 465.

Funds received from foreign governments, in trust for citizens of the United States. See CLAIMS, vol. 2, p. 52.

What trusts included.—The requirements of this statute relate only to a class of trusts which cannot be interfered with or disposed of by the executive power without further legislation. U. S. v. Bayard, (1885) 4 Mackey (D. C.) 311.

Custody of securities.—Under this section trust moneys must be invested by the secretary of the treasury, and in all cases under the statute the securities therefor are to be

retained by the secretary, as he is to reinvest the interest. They cannot be sold and proceeds paid out without further authority of law. U. S. v. Bayard, (1885) 4 Mackey (D. C.) 311.

Proceeds of Indian lands.—“In making the investment of the proceeds of the sale of Indian lands (which sales were provided for by treaty stipulations) the President was required to make all such investments in United States stocks bearing interest at not less than five per cent. per annum.” (1878) 16 Op. Atty-Gen. 31. See also (1857) 9 Op. Atty-Gen. 44.

Sec. 5488. [*Disbursing officer unlawfully depositing, converting, loaning, or transferring public money.*] Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the Treasurer or any assistant treasurer, or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred, or applied; and shall be punished by imprisonment with hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment. [R. S.]

Act of June 14, 1866, ch. 122, 14 Stat. L. 64.

“Knowingly or wilfully misappropriating money of the United States appropriated for—‘furnished or intended for’—the improvement of rivers and harbors” is an offense falling clearly within the language of section 5488. *In re Carter*, (1899) 97 Fed. Rep. 496.

“Obviously this is a crime, made so by this very section.” *In re Carter*, (1899) 97 Fed. Rep. 496.

Withdrawing money by checks on false accounts.—“A disbursing officer of the United States applied to a purpose not prescribed by law large sums of public money intrusted to him for river and harbor purposes, by causing them to be paid out by checks on false accounts, the payment being accomplished by the drawing and delivery of the checks directing payment to be made of moneys of the United States, and thus withdrew by means of checks from the authorized depository, moneys for an unauthorized purpose and applied them to unlawful purposes. The application, coupled with the payment and withdrawal of the funds by checks, constituted the embezzlement defined in section 5488.” *Carter v. McClaghry*, (1902) 183 U. S. 366, *affirming* (1900) 105 Fed. Rep. 614.

“The fact that the vouchers purported to be issued as against [certain appropriations], if these vouchers were false and falsely certified to, and if the accounts on which the moneys were paid were false, the moneys not being

due or owing from the United States to the parties paid, or to any one else, and he well knowing this to be the case, as stated in the specification,—could not make the application of the money by that payment an application prescribed by law.” *Carter v. McClaghry*, (1902) 183 U. S. 366, *affirming* (1900) 105 Fed. Rep. 614.

Compared with embezzlement under articles of war.—It is a species of embezzlement different from that defined in the ninth paragraph of the sixtieth article of war, since the money which is the subject of embezzlement under the latter article is “money furnished for military service,” whereas, under section 5488, the term “money” comprehends any public money, whether appropriated for the military service or for other purposes. The offense denounced in section 5488 is much broader and more comprehensive than the other; the former being the application by the disbursing officer of money to any unauthorized purpose, while under the ninth paragraph mentioned the money which is the subject of the embezzlement is money appropriated specifically for the military service. *Carter v. McClaghry*, (1900) 105 Fed. Rep. 614, *affirmed* (1902) 183 U. S. 365.

Sufficient indictment.—A specification setting forth that defendant was a disbursing officer of the United States and that as such officer he was intrusted with certain public money, which he wilfully and knowingly caused to be paid on false accounts, the

amount paid not being due or owing from the United States to the parties to whom the payments were made, which defendant well knew, charges the application of public money to "a purpose not prescribed by law," and

with the details which the specifications supply constitutes a sufficient indictment under section 5488. *Carter v. McClaughry*, (1900) 105 Fed. Rep. 614, *affirmed* (1902) 183 U. S. 365.

Sec. 5489. [*Failure of Treasurer, etc., to safely keep public moneys.*] If the Treasurer of the United States, or any assistant treasurer, or any public depositary, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having moneys of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled. [R. S.]

Act of March 3, 1857, ch. 114, 11 Stat. L. 249.

Sec. 5490. [*Custodians of public money failing to safely keep, without loaning, etc.*] Every officer or other person charged by any act of Congress with the safe-keeping of the public moneys, who fails to safely keep the same, without loaning, using, converting to his own use, depositing in banks, or exchanging for other funds than as specially allowed by law, shall be guilty of embezzlement of the moneys so loaned, used, converted, deposited, or exchanged; and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled. [R. S.]

Act of Aug. 6, 1846, ch. 90, 9 Stat. L. 63.
What officers included.—The terms employed in these Acts to designate the persons made liable under them are not restrained and limited to principal officers. *U. S. v. Hartwell*, (1867) 6 Wall. (U. S.) 385.

The secretary of a territory having been charged in his official capacity with the disbursement of public money under an appropriation for legislative expenses for the territory and having absconded with the funds thus placed in his hands, is guilty of embezzlement within the meaning of this section. *Gilson's Case*, (1867) 12 Op. Atty.-Gen. 326.

Clerk of assistant treasurer.—A person in the public service of the United States appointed pursuant to statute authorizing an assistant treasurer of the United States to appoint a clerk, with a salary prescribed, whose tenure of place will not be affected by the vacation of office of his superior and whose duties (though such as his superior in office should prescribe) are continuing and permanent—is an officer within the meaning of these sections, and as such subject to the penalties prescribed therein for the misconduct of officers. *U. S. v. Hartwell*, (1867) 6 Wall. (U. S.) 385.

A clerk in a post office acting as a cashier is a public officer within the meaning of this penal clause and liable to prosecution under it for embezzling funds intrusted to him. (1853) 5 Op. Atty.-Gen. 685.

A deputy collector is an officer who comes under this Act. *U. S. v. Bowerman*, (1871) 14 Int. Rev. Rec. 122, 24 Fed. Cas. No. 14,630.

Moneys received by deputy collector.—When any sum or sums of money are paid by the inspectors of hulls and engines as money by them received from engineers and

pilots, and proceeds of the sale of goods forfeited to the government under the revenue laws are paid at the custom house to the deputy collector, the said sums are public moneys within the meaning of the Act. *U. S. v. Bowerman*, (1871) 14 Int. Rev. Rec. 122, 24 Fed. Cas. No. 14,630.

"Consuls not duly accounting for fees collected for consular service are subject to indictment for the statute crime of embezzlement." (1855) 7 Op. Atty.-Gen. 242.

Naval officer overpaid.—An officer of the navy in command of a naval vessel who requires the purser to pay him more money than is due to him, and fails to account, is not guilty of embezzlement. The fact that he was an officer when he received the money does not constitute the receiving or retaining an offense within the meaning of these provisions. In this respect he stands upon the same footing as any other person who may have received public money. (1855) 7 Op. Atty.-Gen. 82.

Attorney and special agent for Indian claims.—A person having been constituted attorney for certain Indians to collect from the government claims for back pay and bounty due them for military services, was also, upon executing a bond to the United States conditioned for the faithful performance of his duties as such attorney, and filing the same in the interior department, empowered as a special agent of that department, without compensation (except such fees as were then or might thereafter be authorized by said department), to collect and pay over to the said Indians their claims. The appointment as such special agent was not made in pursuance of any law of Congress. It was held, that he did not become

Act of Feb. 2, 1872, ch. 12, 17 Stat. L. 29.

This section was amended by the Act of Feb. 16, 1885, ch. 123, 23 Stat. L. 306, by substituting in place of the words "one thousand," appearing in the section as originally enacted, the words "twenty-five hundred," as above given.

Extent of power. — The power given to an accounting officer to duplicate lost checks is not exclusive, nor does it affect the jurisdic-

tion of the Court of Claims. *Becker v. U. S.*, (1891) 26 Ct. Cl. 172.

When payment is made. — Where a government check is lost or stolen the Revised Statutes do not require that payment must be postponed for three years or preclude a suit. They simply authorize disbursing officers to duplicate small checks in certain cases. *Becker v. U. S.*, (1891) 26 Ct. Cl. 172.

Sec. 3647. [*Duplicate check when officer who issued is dead.*] In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued, is dead, or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury shall prescribe, to state an account in favor of the owner of such original check for the amount thereof, and to charge such amount to the account of such officer or agent. [R. S.]

Act of Feb. 7, 1872, ch. 12, 17 Stat. L. 29.

Sec. 3648. [*Advances of public moneys prohibited.*] No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected. [R. S.]

Act of Jan. 31, 1823, ch. 9, 3 Stat. L. 723.

Advances to persons in naval service on distant stations. See NAVY, vol. 5, p. 326.

"The object of that section is not to preclude a payment in any case where the money has been actually earned and the government has received an equivalent therefor, but to prevent payments being made to contractors in advance of the performance of their contracts, whether for services or the supply of articles of any kind." (1885) 18 Op. Atty-Gen. 105.

Complete performance of contract. — This statute was intended to prevent a department from anticipating the performance of an agreement, by keeping the payment within the "value of the service," and does not apply when there is a complete performance although the government may not have received any benefit in consequence of the destruction of the subject-matter of the agreement. *McClure v. U. S.*, (1884) 19 Ct. Cl. 173.

But in (1894) 20 Op. Atty-Gen. 746, it was said that "the intent of this provision is that the United States shall not pay for any work or materials until it had received their benefit. It matters not that the work for which pay is asked has already been done."

President's right to delegate power. —

The power vested to make advances for the public service is one appertaining to the office of President, but is not an authority strictly personal and ministerial, to be exercised in every instance only by the person himself, by his own hand, and never in any respect to be delegated. *Williams v. U. S.*, (1843) 1 How. (U. S.) 290.

Advances by head of department. — As the President speaks and acts through the heads of departments in reference to the business committed to them, if money is advanced by the direction of the head of the proper department, in the absence of evidence, the direction of the President will be presumed. *U. S. v. Cutter*, (1856) 2 Curt. (U. S.) 617, 25 Fed. Cas. No. 14,911.

Expenses incident to the courts. — "Average estimates may be formed of the expenses incident to the courts, and instructions may be given by the President to the secretary of the treasury to make advances from time to time, either upon the basis of those estimates or upon statements or requisitions made by the marshals themselves, showing the necessity of advances to meet the public service." *Williams v. U. S.*, (1843) 1 How. (U. S.) 290.

Advances to contractors. — "It is the plain meaning of this law that no money shall be

advanced to contractors; that is, that no money shall be paid to them on account of their contracts before the actual performance of the service or the delivery of the articles stipulated for. And this not only forbids the contracting officer of the government to pay the money in advance but forbids him also to contract for such payment." (1862) 10 Op. Atty.-Gen. 288.

Advances to public ministers.—"I think it is very clear from the terms of the Act," said Attorney-General Berrien, construing the prior Act, "that advances to foreign ministers were not in the contemplation of the legislature at the time of framing it. It is true that it forbids in general terms the advance of public money in any case whatever; but the subsequent specifications of the Act seem to me to restrict and qualify the generality of this inhibition. These authorize advances under the direction of the President of the United States to disbursing officers of the government when such advances are necessary to the prompt and faithful discharge of their public duties; and to persons in the military and naval service, who may be employed on distant stations, where the discharge of the pay and emoluments to which they are entitled cannot be regularly effected. Now, if the compensation to be made to the diplomatic agents of the government had been supposed to be embraced within the inhibitory provisions of this Act, it is difficult to conceive that Congress should have omitted to invest the President with a similar discretion in relation to these agents. Many cases will certainly occur in which it will be more difficult for the government to fulfil its engagements on the score of compensation to this latter class of agents than any which can be selected among the other. * * * If the Act we have been considering had been deemed applicable to the foreign intercourse fund, a corresponding provision would have been made, extending the executive discretion to this class of cases also." (1829) 2 Op. Atty.-Gen. 204.

"The President being intrusted with the subject of the diplomatic intercourse of the United States with foreign nations, may in his discretion advance money to a minister going abroad over and above his outfit." (1829) 2 Op. Atty.-Gen. 204.

"The President of the United States having the foreign intercourse fund under his direction may advance to a minister going from the United States to a foreign country such part of his salary as he shall deem necessary to the proper fulfilment of public engagements in respect to him." (1823) 1 Op. Atty.-Gen. 620.

Advances to marshal of District of Colum-

bia.—"The President of the United States has authority to order advances of money to be made by the secretary of the treasury to the marshal of the District of Columbia; and such advances may be presumed to have been made under the special direction of the President, and the sureties of the marshal are liable therefor." U. S. v. Williams, (1839) 5 Cranch (C. C.) 619, 28 Fed. Cas. No. 16,715, affirmed in (1843) 1 How. (U. S.) 290.

Acceptance of drafts before service rendered.—The acceptance of a draft by the secretary of war drawn on him by army contractors before services contracted for were received or supplies to be furnished were delivered were mere accommodation loans of the credit of the United States without authority and therefore void. "But if these acceptances can be considered as payments," said Mr. Justice Miller, "they were payments in advance of the service rendered and supplies furnished—payments made before anything was due. They are in that view not only without authority of law, but are expressly forbidden." The Floyd Acceptances, (1868) 7 Wall. (U. S.) 666.

Part payments cannot be made upon government contracts unless the United States thereupon becomes the owner of the work paid for." (1894) 20 Op. Atty.-Gen. 746.

Payment in full for the vessel in advance of its completion and acceptance is forbidden by this section, and hence a modification of the contract to this extent would be beyond the power of the secretary." (1885) 18 Op. Atty.-Gen. 101.

Expenses of detecting counterfeiting.—The President may allow the payment out of the judicial fund of extraordinary expenses incurred by the United States marshals, in executing the laws, by detecting and bringing to punishment persons engaged in counterfeiting treasury notes after such expenses have been specially taxed by the court in whose district the work has been done, yet * * * the secretary of the interior has no authority to make requisitions upon that fund for money to be advanced to marshals to be used in efforts to detect counterfeiters of that kind." (1862) 10 Op. Atty.-Gen. 225.

Liability of sureties.—The section requiring the especial direction of the President to authorize the advance of public moneys to disbursing officers is merely directory to the officers of the government and is not a qualification of the contract of the surety for such officer; and the surety is liable for the misappropriation of public money by his principal, though it was advanced to him contrary to this Act. U. S. v. Cutter, (1856) 2 Curt. (U. S.) 617, 25 Fed. Cas. No. 14,911.

Joint resolution providing for partial payments for work, and so forth, for vessels constructed under the direction of the Secretary of the Treasury.

[Res. No. 24, of May 5, 1894, 28 Stat. L. 582.]

[*Partial payments on contracts for construction of vessels for Treasury Department—lien.*] That the Secretary of the Treasury be, and he hereby is, authorized to make partial payments, from time to time, upon existing con-

Sec. 5495. [*Prima-facie evidence.*] The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money, to pay any draft, order, or warrant, drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as prima-facie evidence of such embezzlement. [*R. S.*]

Act of Aug. 6, 1846, ch. 90, § 9 Stat. L. 63.

Effect of section.—“This provision concerning evidence does not create the offense of embezzlement but simply declares what proof shall be sufficient. The offense is created by the previous sections and is confined to persons who receive public money to keep, transfer, or disburse, and those who advise or participate in the accepting, receiving, or transmission of certain vouchers. Those guilty of these offenses may be indicted for embezzlement and convicted upon the pro-

duction of certain specified evidence. This evidence can only be used against persons who are previously declared to be guilty of embezzlement.” (1855) 7 Op. Atty.-Gen. 82.

Hearsay evidence.—A duly certified transcript from the treasury is made evidence and declared to be *prima facie* evidence of embezzlement; but where the items of such evidence have been estimated and made up from hearsay, they are not admissible. *U. S. v. Forsythe*, (1855) 6 McLean (U. S.) 584, 25 Fed. Cas. No. 15,133.

Sec. 5496. [*Evidence of conversion.*] If any officer charged with the disbursement of the public moneys, accepts, receives, or transmits to the Treasury Department to be allowed in his favor, any receipt or voucher from a creditor of the United States, without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized by law to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion, by such officer to his own use, of the amount specified in such receipt or voucher. [*R. S.*]

Act of Aug. 6, 1846, ch. 90, § 9 Stat. L. 63.

Sec. 5497. [*Unlawfully receiving, etc., to be embezzlement — embezzlement by internal revenue officers and their assistants.*] Every banker, broker, or other person not an authorized depository of public moneys, who knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or who uses, transfers, converts, appropriates, or applies any portion of the public money for any purpose not prescribed by law, and every president, cashier, teller, director, or other officer of any bank or banking association, who violates any of the provisions of this section, is guilty of an act of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be punished as prescribed in section fifty-four hundred and eighty-eight. And any officer connected with, or employed in, the internal-revenue service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be punished by a fine

equal to the value of the money and property thus embezzled or converted, or by imprisonment not less than three months nor more than ten years, or by both such fine and imprisonment. [R. S.]

Act of June 14, 1866, ch. 122, 14 Stat. L. 65. This section was amended by the Act of Feb. 3, 1879, ch. 42, 20 Stat. L. 280, by adding at the end of the section as originally enacted, the provisions beginning with the words "And any officer connected with," etc.

What officers included.—Prior to the amendment of this section it was held in *U. S. v. Hartwell*, (1867) 6 Wall. (U. S.) 386

that this section "is limited in its terms to the officers named in it. There is nothing which extends it beyond them. It cannot by construction be made to include any others. It is confined to officers of banks and banking associations." The Act does not affect a clerk in the office of the assistant treasurer.

PUBLIC OFFICERS.

- R. S. 1753-1755.** (See CIVIL SERVICE, vol. 1, pp. 827, 828), 580.
1756. (*Form of Oath of Office — Repealed*), 580.
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- R. S. 1757.** *Oath for Certain Persons, 581.*
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1775. *Notification of Nominations, Rejections, etc., to Secretary of Treasury, 605.*
1776. *Removal of Office, 605.*
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1778. (*Taking Oaths, Acknowledgments, etc. See JUDICIAL OFFICERS, vol. 4, p. 165*), 605.

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Secs. 1753-1755. [See *CIVIL SERVICE*, vol. 1, pp. 827, 828.]

Sections 1753-1790 constitute title 19 of the Revised Statutes, entitled "Provisions Applicable to Several Classes of Officers."

Sec. 1756. [Form of oath of office.] [Repealed.]

This section was as follows:

"Sec. 1756. Every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service, excepting the President and the persons embraced by the section following, shall, before entering upon the duties of such office, and before being entitled to any part of the salary or other emoluments thereof, take and subscribe the following oath: "I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof;

that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will

support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will

well and faithfully discharge the duties of the office on which I am about to enter, so help me God." Act of July 2, 1862, ch. 128, 12 Stat. L. 502.

It was directly repealed by Act of May 13, 1884, ch. 46, sec. 2, set forth below.

An act amending the Revised Statutes of the United States in respect of official oaths, and for other purposes.

[Act of May 13, 1884, ch. 46, 23 Stat. L. 21.]

[SEC. 1.] [*Amends R. S. sec. 1218.* See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.]

SEC. 2. [*Form of oath of office.*] That section seventeen hundred and fifty-six of the Revised Statutes be, and the same is hereby, repealed; and hereafter the oath to be taken by any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States, shall be as prescribed in section seventeen hundred and fifty-seven of the Revised Statutes. But this repeal shall not affect the oaths prescribed by existing statutes in relation to the performance of duties in special or particular sub-ordinate offices and employments. [23 Stat. L. 22.]

R. S. sec. 1756, above repealed, is set forth in the note, *supra*.

R. S. sec. 1757, above mentioned, is given *infra*.

SEC. 3. [*Effect of act on existing rights, etc.*] That the provisions of this act shall in no manner affect any right, duty, claim, obligation, or penalty now existing or already incurred; and all and every such right, duty, claim, obligation, and penalty shall be heard, tried, and determined, and effect shall be given thereto, in the same manner as if this act had not been passed. [23 Stat. L. 22.]

SEC. 4. [*Repeals R. S. secs. 820, 821.* See JURIES, vol. 4, pp. 747, 748.]

Sec. 1757. [*Oath for certain persons.*] Whenever any person who is not rendered ineligible to office by the provisions of the fourteenth amendment to the Constitution is elected or appointed to any office of honor or trust under the Government of the United States, and is not able, on account of his participation in the late rebellion, to take the oath prescribed in the preceding section, he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." [R. S.]

Act of July 11, 1868, ch. 139, 15 Stat. L. 85; Act of Feb. 15, 1871, ch. 53, 16 Stat. L. 412.

Removal of disability.—See Act of June 6, 1898, ch. 389, *infra*, p. 583.

Purpose of oath.—"This oath is wisely framed for the purpose of upholding the paramount authority of the national government, and recognizes allegiance to the United States as the highest political duty. It em-

phatically repels the deadly heresy of a paramount state allegiance." Charge to Grand Jury, (1861) 2 Sprague (U. S.) 285, 30 Fed. Cas. No. 18,277.

Competency of Indian to take oath.—"The condition of an Indian who is a member of a tribe, and especially one who dwells within the territory and jurisdiction of his tribe, is peculiar. He is regarded and treated by our government as belonging to a separate though

dependent political community, the members of which owe immediate allegiance thereto and are not ordinarily dealt with by the government individually, so long as their tribal relation is preserved. The obligation imposed by the oath does not seem to be consistent with the duty of obedience to tribal authority which springs from such relation, and the existence of which is distinctly recognized by our government, and its effect would obviously be to greatly weaken if not destroy that relation. Unless clearly warranted by the provisions of some treaty or statute, an Act which thus interferes with the tribal relation and is productive of consequences so discordant and in such direct conflict with the authority of the tribe over its members and their allegiance thereto, must be deemed to have no sanction in our laws." Therefore, "an Indian while a member of a tribe and subject to tribal jurisdiction is not in legal contemplation competent to take the oath." (1885) 18 Op. Atty-Gen. 181.

Application to foreign subjects. — However broad the language of any general statute requiring an oath of allegiance as a qualification for office, it can have no application to foreign subjects appointed to office abroad. (1902) 23 Op. Atty-Gen. 608.

Before authorized officer. — The Act requiring an oath is not complied with unless the oath is taken before an officer authorized by the laws of the United States to administer oaths. A foreign consul residing in Mexico has no such authority. *Otterbourg's Case*, (1869) 5 Ct. Cl. 432.

Oaths of postmasters. — "While postmasters, in common with all other officers of the United States, except the President, are now required to take the oath of office prescribed in section 1757, R. S., they are not exempted from taking the oath prescribed by the Act of March 5, 1874, ch. 46, relative to the performance of duties in the postal service, but must take this also." (1885) 18 Op. Atty-Gen. 181.

Indian as postmaster. — "An Indian residing in the Indian Territory, who is a member of one of the tribes there, and subject to tribal jurisdiction, is not eligible to appointment as a postmaster; he being incompetent in contemplation of law to take the required oath of office." (1885) 18 Op. Atty-Gen. 181.

Members of Congress included. — In (1882) 17 Op. Atty-Gen. 419, it was held, under R. S. sec. 1756, that the words "every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service," include members of Congress.

Clerks in the executive departments are officers, and required to take the oath prescribed. (1868) 12 Op. Atty-Gen. 521.

Clerk of supervisor of internal revenue. — The statute requiring every person elected or appointed to any office, whether of honor or profit, to take a prescribed oath, does not extend to the clerk of a supervisor of internal revenue. He is not an officer. *Hedrick's Case*, (1880) 16 Ct. Cl. 38.

Mail contractors. — The provisions of the Act of July 2, 1862 (R. S. 1756), having been

taken by Congress to include mail contractors, they are to be regarded as also included in the provisions of the Act of Feb. 15, 1871 (R. S. 1757). (1871) 13 Op. Atty-Gen. 390.

Marshals of consular courts. — Subjects of a foreign nation may be appointed marshals of the consular courts, and when so appointed need not, under the laws and regulations, take the oath prescribed by the Revised Statutes. All such officers should be required to take an oath or affirmation to faithfully perform the duties of their offices, and similar to that prescribed, except as to allegiance and support of the Constitution of the United States. Even if the statutes applied to such officers abroad, who are foreign subjects, it might well be held that this being so far a compliance therewith as is lawful, was a sufficient compliance. (1902) 23 Op. Atty-Gen. 608.

Consular agents are not regarded as officers within the meaning of this section, and are not required to take the oath of office and give a bond, but are accountable to the consul under whom they act. *Sampson v. U. S.*, (1895) 30 Ct. Cl. 365.

Oath does not constitute officer de jure. — "An official oath is an incident to the discharge of the duties imposed and does not in itself constitute him who takes it an officer *de jure*." *Glavey v. U. S.*, (1900) 35 Ct. Cl. 242.

Oath as acceptance of office. — Where, under the Act of Feb. 14, 1889, ch. 166, one was appointed from civil life to the position of major of engineers in the army, and thereupon was placed on the retired list of the army as of that grade, he must take the oath required by the Revised Statutes, and this act would be in law a legal acceptance of the office and as such a sufficient formal acceptance. *Smith's Case*, (1889) 19 Op. Atty-Gen. 283.

Effect of taking oath for different office. — Whatever form of oath is taken, the taking of the oath is a prerequisite to the entering upon the official duties or drawing salary therefor. That a minister prior to his appointment had taken the oath and entered upon the duty of a different office does not relieve him from the requirements of the statute. (1889) 19 Op. Atty-Gen. 219.

Oath of officer succeeding himself. — The statute provides that the appointee shall take the oath before he enters upon the duties of such office as he may be appointed to. That a person was his own successor does not relieve him from the provisions of the section, for it contemplates that the oath shall be taken at every new appointment before entering upon the duty. (1889) 19 Op. Atty-Gen. 219.

When compensation begins. — The title of a collector of internal revenue to receive, or retain, or hold, or appropriate commissions as compensation does not arise until he takes and subscribes the oath or affirmation, but when he does so his compensation is to be computed on moneys collected by him from the time when under his appointment he began to perform services as collector, which the government accepted, provided he has

paid over and accounted for such moneys. *U. S. v. Flanders*, (1884) 112 U. S. 88.
Compensation when oath not taken. — In (1870) 13 Op. Atty.-Gen. 300, it was held that where a person was appointed an assistant assessor of internal revenue in Texas, and

served as such during the years 1865 and 1866, but did not take the oath of office prescribed by the Act of July 2, 1862, he is entitled to compensation for the services so rendered under the provisions of section 11 of the Act of July 15, 1870.

An Act To remove the disability imposed by section three of the Fourteenth Amendment to the Constitution of the United States.

[*Act of June 6, 1898, ch. 389, 30 Stat. L. 432.*]

[*Disability imposed for engaging in rebellion, removed.*] That the disability imposed by section three of the Fourteenth Amendment to the Constitution of the United States heretofore incurred is hereby removed. [30 Stat. L. 432.]

Section 3, referred to, provides that no person shall be a senator, representative, or hold any office, etc., who, having previously taken an oath as a member of Congress or as

an officer of the United States, etc., to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, etc.

Sec. 1758. [*Who may administer oath.*] The oath of office required by either of the two preceding sections may be taken before any officer who is authorized either by the laws of the United States, or by the local municipal law, to administer oaths, in the State, Territory, or District where such oath may be administered. [R. S.]

Act of Aug. 6, 1861, ch. 64, 12 Stat. L. 326.
To customs officers. — See CUSTOMS DUTIES, vol. 2, p. 579.

What oaths included. — "While the section is in terms permissive only, it is in effect much more, for as it says that all oaths which are required may be taken here, it is implied of course that none are intended but such as it was contemplated might be thus taken, and as it was not contemplated that all the various officers of the diplomatic and consular service would either be qualified here and go to those far-off countries on the small salaries allowed, or come here to be qualified, it would seem that they were not within the intended purview of those sections." (1902) 23 Op. Atty.-Gen. 608.

Territorial limitation. — "This means a state, territory, or district within the United States, and refers to a district in the United States just as certainly as it does to a state or territory within that limit, and refers to the District of Columbia. All the oaths, then, that are thus required to be taken may be taken in the United States. This would seem to operate, as many other provisions do operate, to limit the otherwise universal application of section 1756, so that the requirement may be no broader than the permitted performance, and so that no oaths are intended except such as may be taken in the only mode prescribed." (1902) 23 Op. Atty.-Gen. 608.

[SEC. 1.] [*Chief clerks of departments and bureaus to administer oaths of office — no department officer to charge fee.*] * * * And no officer, clerk, or employee of any executive department who is also a notary public or other officer authorized to administer oaths, shall charge or receive any fee or compensation for administering oaths of office to employees of such department required to be taken on appointment or promotion therein.

And the Chief Clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion. [26 Stat. L. 370.]

This is from the Act of Aug. 29, 1890, ch. 820, "An act making appropriations for additional clerical force and other expenses to

carry into effect the act entitled 'An act granting pensions to soldiers and sailors who are incapacitated for the performance of

manual labor, and providing for pensions to widows, minor children, and dependent parents,' from September first, eighteen hundred

and ninety, for the balance of the fiscal year ending June thirtieth, eighteen hundred and ninety-one."

Sec. 1759. [*Custody of oath.*] The oath of office taken by any person pursuant to the requirements of section seventeen hundred and fifty-six, or of section seventeen hundred and fifty-seven, shall be delivered in by him to be preserved among the files of the House of Congress, Department, or court to which the office in respect to which the oath is made may appertain. [R. S.]

Act of July 2, 1862, ch. 128, 12 Stat. L. 502.

SEC. 5. [*Official bonds to be filed with Secretary of the Treasury.*] * * * Hereafter all bonds of the Treasurer of the United States, collectors of internal revenue, collectors, naval officers, surveyors, and other officers of the customs, either as such officers or as disbursing officers of the Treasury, bonds of the Secretary of the Senate, Clerk of the House of Representatives, and the Sergeant-at-Arms of the House of Representatives, and all such bonds now on file in the office of the Comptroller of the Treasury, shall be transmitted to the Secretary of the Treasury and filed as he may direct; and the duties now required by law of the Comptroller of the Treasury in regard to such bonds, as the successor of the Commissioner of Customs and First Comptroller of the Treasury, shall hereafter be performed by the Secretary of the Treasury. [28 Stat. L. 807.]

[*Official bonds to be examined every two years.*] Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary. [28 Stat. L. 807.]

[*Renewal of official bonds.*] Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor: *Provided*, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: *Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: *And provided further*, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States. [28 Stat. L. 807.]

The above provisions are from the Legislative, Executive, and Judicial Appropriation Act of March 2, 1895, ch. 177.

The office of commissioner of customs was abolished by Act of July 31, 1894, ch. 174, sec. 4.

An act requiring notice of deficiency in accounts of principals to be given to sureties upon bonds of United States officials, and fixing a limitation of time within which suits shall be brought against said sureties upon said bonds.

[Act of Aug. 8, 1858, ch. 787, 25 Stat. L. 387.]

[SEC. 1.] [Notice to sureties on bond of deficiency in accounts of officers.] That hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond. [25 Stat. L. 387.]

When notification should be given. — It was not intended that the accounting officer should delay this notice until it has become certain that there is a deficiency; nor on the other hand should he always report a deficiency whenever from the account of a disbursing officer it may appear *prima facie* that there is one. This may be from insufficient vouchers or evidence, or from clerical error or omission, or one or more of the various ways not inconsistent with a proper disbursement of the moneys in his hands. Whenever in the exercise of a sound judgment and after a reasonable time allowed for explanation and correction it appears to the accounting officer that there is a probable deficiency he should notify the head of the department as herein provided. (1899) 22 Op. Atty-Gen. 611.

Effect of failure to notify sureties. — The fact that the United States, through its officers, neglected and failed to notify the sureties on the bond of a collector of internal revenue of his failure to account for and pay over moneys received, until long after his failure, and long after he became insolvent and unable to pay any of his debts and liabilities, and the fact that by failure to give the sureties such information they had lost the opportunity to protect themselves as sureties, will not release them from their obligation as sureties, as it is expressly stated in the above statute that failure to give such notice shall not discharge the sureties on the bond. *Pond v. U. S.*, (C. C. A. 1901) 111 Fed. Rep. 989.

SEC. 2. [If suit be not instituted within five years sureties released.] That if, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States, and suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness. [25 Stat. L. 387.]

Not retrospective. — This Act clearly manifests the intention of Congress that upon the adjustment by the treasury officials of the accounts of the various officers, all indebtedness to the United States thereby shown shall, if not paid, be sued for by the government within a reasonable time; otherwise the sureties upon such official bonds shall not be liable for such indebtedness. The Act, however, shows upon its face that it applies to the future only. The improbability that Congress in prescribing the period of five years as a limitation to such suits would, if its attention had been called to the matter, have excluded from its provisions indebtedness evidenced by accounts adjusted more than

thirty years theretofore, does not justify the court in giving to the Act the retrospective effect when such intention cannot be derived from the Act itself. *Harvey v. U. S.*, (C. C. A. 1899) 97 Fed. Rep. 452.

The statute is absolute in its discharge of the sureties if suit on the bond be not instituted "within five years after such statement of said account" by the accounting officer of the treasury. And it makes no exception in case the accounting officer does not make such statement as early as he should or when a deficiency is discovered by him. (1899) 22 Op. Atty-Gen. 611.

When limitation begins to run. — Whether the accounting officer makes the statement

showing an indebtedness to the United States as early as he should, or does not, the limitation fixed by this section begins to run only from the time that the accounting officer of

the treasury makes the statement of account showing an indebtedness to the United States as provided in that section. (1899) 22 Op. Atty.-Gen. 611.

Sec. 1760. [*Unauthorized office, no salary for.*] No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law. [R. S.]

Act of Feb. 9, 1863, ch. 25, 12 Stat. L. 646.
See notes under following sections.
Employing clerks, etc., beyond provisions

of law. See CIVIL SERVICE, vol. 1, pp. 822, 823.

Sec. 1761. [*No salaries to certain appointees to fill vacancies during recess of Senate.*] No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate, to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate. [R. S.]

Act of Feb. 9, 1863, ch. 25, 12 Stat. L. 646.
Power of President to appoint.—This legislation in assuming to act upon the salary of officers appointed during the recess of the Senate, when the vacancies actually existed while the Senate was in session, must be deemed a recognition by Congress of the invariable construction given by the Presidents to the power of appointment conferred upon them by the Constitution. In postponing the payment of the salary of the appointee until the Senate has given its assent to the appointment, it concedes the right of the Presi-

dent to appoint, although it undoubtedly embarrasses the exercise of that right by subjecting the appointee to conditions which are somewhat onerous. (1880) 16 Op. Atty.-Gen. 522.

Vacancy during session.—An office which has become vacant during a session of the Senate may be filled during the next ensuing recess of the Senate by a temporary appointment by the President; but payment of the salary of the appointee in such cases is postponed until he has been confirmed by the Senate. (1883) 17 Op. Atty.-Gen. 521.

Sec. 1762. [*Salaries to officers improperly holding over.*] No money shall be paid or received from the Treasury, or paid or received from or retained out of any public moneys or funds of the United States, whether in the Treasury or not, to or by or for the benefit of any person appointed to or authorized to act in or holding or exercising the duties or functions of any office contrary to sections seventeen hundred and sixty-seven to seventeen hundred and seventy, inclusive; nor shall any claim, account, voucher, order, certificate, warrant, or other instrument providing for or relating to such payment, receipt, or retention, be presented, passed, allowed, approved, certified, or paid by any officer, or by any person exercising the functions or performing the duties of any office or place of trust under the United States, for or in respect to such office, or the exercising or performing the functions or duties thereof. Every person who violates any of the provisions of this section shall be deemed guilty of a high misdemeanor, and shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both. [R. S.]

Act of March 2, 1867, ch. 154, 14 Stat. L. 431.

Section inoperative.—By the repeal of R. S. secs. 1767-1770, above mentioned, by Act of March 3, 1887, ch. 353, sec. 1, 24 Stat. L. 500—see note, p. 604, this section is inoperative.

Salaries to treasury officers holding over.—

See provision from the Act of March 2, 1895, ch. 187, under title TREASURY DEPARTMENT.

The following cases construed this section: Wyman v. U. S., (1891) 26 Ct. Cl. 108; Brown v. U. S., (1889) 24 Ct. Cl. 331; Folger's Case, (1877) 13 Ct. Cl. 90.

Sec. 1763. [*Double salaries.*] No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five

hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law. [R. S.]

Act of Aug. 31; 1852, ch. 108, 10 Stat. L. 100.

Internal revenue collectors. — See INTERNAL REVENUE, vol. 3, pp. 561-564.

Commissioners and clerks. — See JUDICIAL OFFICERS, vol. 4, pp. 80, 96.

Surveyor of customs. — See CUSTOMS DUTIES, vol. 2, p. 584.

Gaugers. — See INTERNAL REVENUE, vol. 3, pp. 566-568.

Naval officers. — See generally NAVY, vol. 5, p. 225.

Clerk of Circuit Court. — See JUDICIAL OFFICERS, vol. 4, p. 86.

Retired officers. — See provision from the Act of July 31, 1894, ch. 174, *infra*, p. 590.

General application of sections. — "We are of the opinion," said Justice Miller, in *U. S. v. Saunders*, (1887) 120 U. S. 126, "that taking these sections altogether, the purpose of this legislation was to prevent a person holding an office or appointment, for which the law provides a definite compensation by way of salary or otherwise, which is intended to cover all the services which as such officer he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services which may be required of him, either by Act of Congress or by order of the head of his department, or in any other mode, added to or connected with the regular duties of the place which he holds; but that they have no application to the case of two distinct offices, places, or employments, each of which has its own duties and its own compensation, which offices may both be held by one person at the same time. In the latter case, he is, in the eye of the law, two officers, or holds two places or appointments, the functions of which are separate and distinct, and, according to all the decisions, he is in such case entitled to recover the two compensations. In the former case, he performs the added duties under his appointment to a single place, and the statute has provided that he shall receive no additional compensation for that class of duties unless it is so provided by special legislation."

Compensation for extra services, where no certain sum is fixed by law, cannot be allowed by the head of a department to any officer who has by law fixed a certain compensation for his services in the office he holds, unless such head of a department is thereto authorized by an Act of Congress; nor can any compensation for extra services be allowed by the court or jury as a set-off, in a suit brought by the United States against any officer for public money in his hands, unless it appears that the head of the department was authorized by an Act of Congress to appoint an agent to perform the extra service, that the compensation to be paid for the service was fixed by law, that the service to be performed had respect to matters wholly outside of the duties appertaining to the office held by the agent, and that the money to pay for the

extra services had been appropriated by Congress. *Hall v. U. S.*, (1875) 91 U. S. 559.

These provisions prohibiting an officer from receiving more than one salary could not by "fair interpretation be held to embrace an employment which has no affinity or connection, either in its character or by law or usage, with the line of his official duty, and where the service to be performed is of a different character and for a different place, and the amount of compensation regulated by law." *U. S. v. Brindle*, (1884) 110 U. S. 688. See, to same effect, *Converse v. U. S.*, (1858) 21 How. (U. S.) 463; *U. S. v. McCandless*, (1893) 147 U. S. 692; *U. S. v. Harsha*, (C. C. A. 1893) 56 Fed. Rep. 953; *Webster v. U. S.*, (1892) 28 Ct. Cl. 25; *Collins's Case*, (1879) 15 Ct. Cl. 37; (1868) 12 Op. Atty.-Gen. 460; *Brown's Case*, (1860) 9 Op. Atty.-Gen. 507; *Hardin's Case*, (1853) 6 Op. Atty.-Gen. 84; (1857) 8 Op. Atty.-Gen. 325; (1851) 5 Op. Atty.-Gen. 765; *Crosthwaite v. U. S.*, (1895) 30 Ct. Cl. 308.

The evil intended to be guarded against by these statutes was not so much plurality of office as it was additional pay or compensation to an officer holding but one office for performing additional duties or the duties properly belonging to another. If he actually holds two commissions and does the duties of two distinct offices he may receive the salary which has been appropriated to each office. (1878) 16 Op. Atty.-Gen. 7; (1877) 15 Op. Atty.-Gen. 306.

In (1839) 3 Op. Atty.-Gen. 422; (1839) 3 Op. Atty.-Gen. 473; (1841) 3 Op. Atty.-Gen. 621; (1842) 4 Op. Atty.-Gen. 126; (1842) 4 Op. Atty.-Gen. 139; (1845) 4 Op. Atty.-Gen. 432; (1846) 4 Op. Atty.-Gen. 464; (1849) 5 Op. Atty.-Gen. 74, and (1857) 9 Op. Atty.-Gen. 123, it is said that the Acts are intended not only to destroy double or extra compensation, but to prevent the holding of more than one office or employment under the government by one person at the same time, without explicit authority of law.

Two offices are incompatible when the performance of the duties of one will prevent or conflict with the performance of the duties of the other, or when the holding of the two is contrary to the policy of the law. *Crosthwaite v. U. S.*, (1895) 30 Ct. Cl. 308.

Method of statutory construction. — In construing statutes restraining the executive from giving dual or extra compensation, courts have aimed to carry out the legislative intent, by giving them sufficient flexibility not to injure the public service, and sufficient rigidity to prevent executive abuse. *Landram's Case*, (1880) 16 Ct. Cl. 74.

The traditions and usages of the United States recognize the policy and propriety of employing, when necessary, the same person at the same time in two distinct capacities. *Landram's Case*, (1880) 16 Ct. Cl. 74.

Purpose of laws respecting salaries. — It is the undoubted aim of general legislation respecting salaries to gauge the work so as to

give full employment to the capacities of the man likely to be appointed to do it, and to measure the pay according to the work. *Landram's Case*, (1880) 16 Ct. Cl. 74.

Salary for incompatible offices.—Where two incompatible offices are held by the same person, to which are attached different salaries, he is entitled to the larger. *Winchell v. U. S.*, (1892) 28 Ct. Cl. 30; *Webster v. U. S.* (1892) 28 Ct. Cl. 25.

Salary of temporary appointee.—When a salary has once been paid to the legal incumbent it cannot again be drawn from the treasury and paid to another acting under a temporary appointment, and performing the duties for which that incumbent had been legally paid, unless there be a new, distinct, specific appropriation for that purpose. (1849) 5 Op. Atty-Gen. 74.

"Office" defined.—An office is a public station or employment conferred by the appointment of government. The term embraces the idea of tenure, duration, emolument, and duties. *U. S. v. Hartwell*, (1867) 6 Wall. (U. S.) 393.

An internal revenue collector is undoubtedly an officer in a branch of the public service, with a salary fixed by law. *Landram's Case*, (1880) 16 Ct. Cl. 74.

A deputy collector of internal revenue, not being an employee of the government (*i. e.*, not in privity with it so as to be able to maintain an action for his pay), does not come within the provisions of the Revised Statutes, sections 1763, 1764, prohibiting officers and employees of the government from receiving dual or extra compensation. *Landram's Case*, (1880) 16 Ct. Cl. 74.

A special deputy marshal is not a public officer within the constitutional limitation as to appointment (Const., art. II., sec. 2), and so can claim nothing by reason of this section. (1884) 17 Op. Atty-Gen. 684.

Acting paymaster.—An acting paymaster appointed by the senior officer present, under R. S. secs. 1381, 1584, is not an officer. He is not appointed as required by the Constitution, takes no oath of office, and gives no bond as paymaster. *Webster v. U. S.*, (1892) 28 Ct. Cl. 25.

Clerks of District of Columbia.—The provisions of the Revised Statutes which forbid compensation for extra or dual services refer to officers and clerks of the United States, and do not extend to those of the District of Columbia. *Donovan v. U. S.*, (1886) 21 Ct. Cl. 120.

Circuit judge as commissioner under treaty.—“The circuit judge appointed as a commissioner under the convention of Feb. 8, 1896, with Great Britain, is entitled to compensation additional to that of his salary, notwithstanding R. S. secs. 1763 and 1765 and the Act of July 31, 1894, sec. 2.” (1898) 22 Op. Atty-Gen. 184.

Clerk of two courts.—Where one lawfully holds the offices of clerk of Circuit Court and clerk of Circuit Court of Appeals, the fact that he has received the salary of three thousand dollars attached to the office of clerk of the Circuit Court of Appeals does not prevent his lawful right to receive compensation

as circuit clerk. *U. S. v. Harsha*, (C. C. A. 1893) 56 Fed. Rep. 953.

Offices of clerk and commissioner.—There is no legal objection to the same person holding the offices of clerk and commissioner, and the person so holding them is entitled to the fees and emoluments of both. *U. S. v. McCandless*, (1893) 147 U. S. 692.

Duties of referee and clerk compatible.—The duties of a referee have no affinity or connection, either in character or by law or usage, with the duties of a clerk in a municipal corporation. *Donovan v. U. S.*, (1886) 21 Ct. Cl. 120.

Special appointment of assistant district attorney.—An assistant district attorney employed at a salary, and also appointed by the attorney-general as a special assistant to a district attorney, pursuant to R. S. secs. 363-366, must be regarded as an officer in the public service. *Cole v. U. S.*, (1893) 28 Ct. Cl. 501.

Deputy marshal as marshal and bailiff.—A deputy marshal cannot represent the marshal in court and earn for him the fees of five dollars, and at the same time be allowed payment for services as bailiff. *Swift v. U. S.*, (1904) 128 Fed. Rep. 767.

Deputy surveyor of customs acting as surveyor.—A deputy surveyor of customs whose appointment was confirmed by Congress, and who received a salary of over two thousand five hundred dollars, does not vacate his office on being authorized to act temporarily in place of the surveyor, by the collector, under R. S. sec. 2629, nor can he receive the compensation of the surveyor, but only that attached to the office of deputy surveyor. *Dinsmore's Case*, (1880) 16 Op. Atty-Gen. 565.

Customs clerk as deputy collector.—In *Jackson's Case*, (1872) 8 Ct. Cl. 354, it was held that where the temporary appointment of a clerk in a custom house to act as a deputy collector expressly states that it is made “without increase of his compensation as clerk,” and he receives his pay as clerk for the period during which he acts as deputy collector, he cannot subsequently recover the difference between his own salary and that of a deputy collector. No official can receive compensation for two offices at the same time, and his acceptance of the one precludes him from seeking a recovery of the other.

A deputy auditor of the treasury detailed to disburse an appropriation for defraying the expenses of a commission which acts under the direction of the secretary of the navy does not hold two distinct offices if the statute making the appropriation does not create the office of disbursing agent. *Whitaker v. U. S.*, (1892) 27 Ct. Cl. 524.

Receiver of land office disposing of Indian lands.—Where a receiver of public moneys for a district of lands subject to sale was appointed as a special receiver and superintendent to assist in disposing of certain lands held in trust for Indians, no new duty was imposed on him as receiver of the land office, and the latter appointment was in effect to an agency for the sale of lands for the Indians, with an implied understanding that a reasonable compensation would be paid for

the services rendered. The provisions of this section and the two following sections do not apply to such a case, nor do they prevent the recovery of compensation for such service with regard to those trust lands by reason of his being a receiver of the land office, as the moneys paid for the Indian lands were trust moneys and not public moneys. *U. S. v. Brindle*, (1884) 110 U. S. 688.

Gauger as supervisor's clerk.—Although an officer of the United States while acting as gauger, a person was not an officer while acting as supervisor's clerk. Therefore, the provisions of section 1763 of the Revised Statutes, which refer to the discharge of the duties of two offices by the same person, do not refer to his case. *Hedrick's Case*, (1880) 16 Ct. Cl. 88.

Plurality of offices.—The offices of register of wills for Washington county and commissioner of police, or the offices of member of the Levy Court, commissioner of police, and collector of internal revenue for the District of Columbia, may be held, and the emoluments thereof may be received by one person at the same time. (1863) 10 Op. Atty-Gen. 446.

A naval officer acting as paymaster, if appointed to discharge the duties of an office which he does not hold, is prohibited from receiving dual compensation. *Webster v. U. S.*, (1892) 28 Ct. Cl. 25.

The offices of engineer and paymaster in the navy are incompatible, and he who holds them is not entitled to the compensation of both, but is entitled to the larger of the two. *Webster v. U. S.*, (1892) 28 Ct. Cl. 25.

Naval cadet as draftsman.—A cadet engineer in the navy is not entitled to the salary of a draftsman in the hydrographic office in addition to his own, though he hold both offices, such offices being incompatible. *Winchell v. U. S.*, (1892) 28 Ct. Cl. 30.

Midshipman appointed acting master.—Prior to the passage of this Act it was held by Attorney-General Coffey, in *Pay of a Midshipman appointed Acting Master*, (1861) 10 Op. Atty-Gen. 111, that a midshipman appointed as acting master may hold such office in addition to his regular naval rank. And upon the authority of *Converse v. U. S.*, (1858) 21 How. (U. S.) 463, if appointed thereto, he is entitled to receive the pay of that grade.

Assistant medical referee as examining surgeon.—The duties of assistant medical referee in the pension bureau are not compatible with those of examining surgeon, and therefore payment to one person for both offices is not permissible. *Graham v. U. S.*, (1894) 29 Ct. Cl. 404.

Navy agent as pension agent.—The payment of navy and privateer pensions, under the orders of the secretary of the navy, does not constitute the person paying them an officer of the United States; and if the person thus disbursing public money at the same time holds the office of navy agent, he cannot be allowed any extra pay or emolument for making such disbursement. *Browne v. U. S.*, (1851) 1 Curt. (U. S.) 15, 4 Fed. Cas. No. 2,036.

Retired officer holding civil office.—"A retired officer is not precluded from holding a civil office under the United States government unless in the consular or diplomatic service." (1877) 15 Op. Atty-Gen. 306. See to same effect *Smith's Case*, (1889) 19 Op. Atty-Gen. 283.

"A retired officer may draw his pay as such and may also draw the salary of any civil office which he may hold under the government, assuming always that the duties of the civil office are performed under and by virtue of a commission appointing him to that office which he holds in addition to his rank as a retired officer." (1877) 15 Op. Atty-Gen. 306. The interpretation is sustained by the Court of Claims in *Meigs v. U. S.*, (1884) 19 Ct. Cl. 497, and by the Supreme Court in *Converse v. U. S.*, (1858) 21 How. (U. S.) 464; *U. S. v. Brindle*, (1884) 110 U. S. 688.

Retired officers in diplomatic service.—Under the Act of March 3, 1875, retired officers situated as therein described are so far taken out of the operation of the Act of 1868 as not to be held, if they accept or hold diplomatic or consular appointment, to have resigned their places in the army; but this does not change the general policy of the law, and does not entitle them to pay as army officers during the period of time when they are absent from their country in the discharge of continuous official duties inconsistent with subjection to the rules and articles of war and other incidents of military service. Notwithstanding section 1223 such officers when in the diplomatic or consular service may still be borne on the retired list, but cannot receive double compensation. *Badeau v. U. S.*, (1889) 130 U. S. 439.

Retired army officer in executive department.—A retired army officer is not prohibited by law from holding an office in an executive department, nor from receiving the salary thereof in addition to his retired pay. *Collins's Case*, (1879) 15 Ct. Cl. 27.

Retired officer as departmental clerk.—The office of chief clerk of a department and that of an officer on the retired list are not incompatible, and a person may hold two such offices and receive the salaries of both. *Geddes v. U. S.*, (1903) 38 Ct. Cl. 428.

Retired naval officer appointed meteorologist.—A retired naval officer serving in time of war upon the active list and appointed meteorologist by the secretary of the navy under the statute providing an emergency fund for the war is entitled to his salary as a meteorologist, notwithstanding the fact that he is an officer on the retired list; and he is entitled to the pay of an officer on the retired list, but not to the pay of an officer on the active list. *Hayden v. U. S.*, (1903) 38 Ct. Cl. 39.

Retired officer supervising work.—A retired army officer may be employed by the war department to supervise work where he could not have been assigned to that duty, notwithstanding the provisions of Revised Statutes (secs. 1763, 1764, 1765) relating to double pay. *Yates v. U. S.*, (1890) 25 Ct. Cl. 296.

SEC. 2. [*Holding more than one office.*] * * * No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate. [28 Stat. L. 205.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 31, 1894, ch. 174.

See following text.

See also notes under preceding text as to retired officers.

Fixed compensation necessary.—The phrase, "an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars," plainly imports a fixed compensation of at least that amount. The annual compensation must be determinate and not merely matter of speculation. *U. S. v. Durlacher*, (1894) 63 Fed. Rep. 672.

Certain special employment or additional service is not incompatible with an office under the United States and does not even preclude the payment of compensation for the special employment under the prohibitions of sections 1763-1765, R. S., and section 2 of this Act. (1902) 24 Op. Atty.-Gen. 12.

Commissioners under treaties.—This Act, passed anterior to the treaty with Great Britain, Feb. 6, 1896, as a supplement to a series of Acts which first concerned only collectors of customs, naval officers, and surveyors, and was afterwards extended to other officers, should be regarded as not intended by Congress to invade the domain of the treaty-making authority and establish restrictions upon future occasional and temporary commissionership created by international agreement, the nature and functions of which neither Congress nor the framers of article 2, section 2, of the Constitution could wisely have undertaken to foresee. The treaty might have provided for the appointment of an identical commissioner by our ambassador to Great Britain, or by the President of France, instead of by the President of the United States, and might, for reasons im-

portant to the two treaty-making authorities, have expressly required one of the judges of the Supreme Court to be appointed. With such matters Congress, by this Act, had no intention of interfering. If within the letter such an employment seems to be beyond the intent of that law. (1898) 22 Op. Atty.-Gen. 184.

The word "office," as used in section 2 of this Act, is to be presumed, in the absence of indications to the contrary, not to embrace a commissionership under a treaty, because it is not what is called a constitutional office. (1898) 22 Op. Atty.-Gen. 184.

Clerk as commissioner.—This Act has not changed the law, and a clerk of the Circuit Court is not barred from holding the office of commissioner of the Circuit Court, as to neither office is there a salary attached, and it is impossible to determine that the clerk is disqualified for the reason that he at that time holds an office to which a salary is attached of \$2,500. *U. S. v. Durlacher*, (1894) 63 Fed. Rep. 672.

Retired officer.—The secretary of the navy is not precluded by section 2 of the Act of July 31, 1894, from employing one retired under the Act of Feb. 19, 1897, to supervise the completion of certain tables of planets. (1897) 21 Op. Atty.-Gen. 507.

No office created.—The Act of Congress, Feb. 19, 1897, authorizing the expenditure of money for the employment of a competent mathematician to supervise the completion of certain tables of planets, providing no permanency to the term, no requirement that the person employed shall either take an official oath or receive a commission and no formalities in the selection of such an employee, does not create an office. (1897) 21 Op. Atty.-Gen. 507.

SEC. 7. [*Employment of retired army and navy officers, on river and harbor improvement.*] That section two of the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes, approved July thirty-first, eighteen hundred and ninety-four, shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment. [29 Stat. L. 235.]

This is from the Act of June 3, 1896, ch. 314, "An Act making appropriations for the construction, repair, and preservation of cer-

tain public works on rivers and harbors, and for other purposes."

Section 2 of the Act of July 31, 1894, above referred to, is set out in the preceding text.

[SEC. 1.] [*Compensation for clerks or secretaries of retired officials.*]
 * * * That hereafter no allowance or compensation for clerks or secretaries of officials of the United States retired from active service shall be authorized.
 * * * [30 Stat. L. 644.]

This is from the Sundry Civil Appropriation Act of July 1, 1898, ch. 546, and follows a provision for payment for services of a clerk to a retired justice of the Supreme Court.

Sec. 1764. [*Extra services.*] No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.
 [R. S.]

Act of Aug. 26, 1842, ch. 202, 5 Stat. L. 525.

See notes under R. S. sec. 1763, *supra*, p. 587.

Extra compensation to clerks forbidden. See CIVIL SERVICE, vol. 1, p. 826.

Extra compensation to district attorney. — See JUDICIAL OFFICERS, vol. 4, p. 89.

Letter carriers. — See POSTAL SERVICE, vol. 5, p. 780.

Officers in treasury department. — See generally TREASURY DEPARTMENT.

Extra compensation of contractor. — See PUBLIC CONTRACTS.

Extra compensation to clerks of courts. — See JUDICIAL OFFICERS, vol. 4, p. 95 *et seq.*

Commissioners for selling stamps. — See POSTAL SERVICE, vol. 5, p. 780.

Inspectors of customs. — See CUSTOMS DUTIES, vol. 2, p. 606.

Internal revenue collectors. — See INTERNAL REVENUE, vol. 3, pp. 558-561.

Naval officers. — See generally NAVY, vol. 5, p. 225.

Before the Acts of 1835, 1839, etc., the executive exercised a very large discretion in these matters. That discretion is now, so far as salaried officers are concerned, taken away. If there be a really strong, equitable claim to extraordinary allowances it must be addressed to the discretion and indulgence of Congress. (1842) 4 Op. Atty.-Gen. 128.

The purpose of Congress in the enactment was not absolutely and in all cases to prohibit the employment of any class of officers in the discharge of extra services, or the disbursement of public money, or to deny them a just compensation when so employed, but only to apply the prohibition to cases in which no extra allowance or compensation had been authorized by law. The object in view was to guard against the exercise of executive discretion on the one hand and the claims arising by implication, and thus asserted by public officers on the other. It was not so much to prescribe disabilities as

against public agents, as to guard and protect the treasury against unforeseen demands. (1843) 4 Op. Atty.-Gen. 249.

General construction. — "We are of opinion," said Harlan, J., "that Congress intended, by sections 1764 and 1765, to uproot the practice under which, in the absence of any statute expressly authorizing it, extra allowances or special compensation were made to public officers for services which they were required to render in consideration only of the fixed salary and emoluments established for them by law. Our duty is to give effect to the legislation of Congress, and not to defeat it by an interpretation plainly inconsistent with the words used." U. S. v. Johnson, (1899) 173 U. S. 363.

"It is impossible," said Mr. Justice Nelson, "to misunderstand this language or the purpose and intent of the enactment. It cuts up by the roots these claims by public officers for extra compensation on the ground of extra services. There is no discretion left in any officer or tribunal to make the allowance unless it is authorized by some law of Congress. The prohibition is general and applies to all public officers or quasi-public officers who have a fixed compensation." Hoyt v. U. S., (1850) 10 How. (U. S.) 109. See also U. S. v. Shoemaker, (1868) 7 Wall. (U. S.) 338.

In Mullett v. U. S., (1893) 150 U. S. 566, it was said that "obviously the purpose of Congress, as disclosed by these sections, was that every officer or regular employee of the government should be limited in his compensation to such salary or fees as were by law specifically attached to his office or employment. 'Extras,' which are such a fruitful subject of disputes in private contracts, were to be eliminated from the public service."

The elements necessary to justify the payment of compensation to an officer for additional services are, that they shall be performed by virtue of a separate and distinct appointment authorized by law; that such

services shall not be services added to or connected with the regular duties of the place he holds, and that a compensation whose amount is fixed by law or regulation shall be provided for their payment. (1888) 19 Op. Atty-Gen. 121.

Not upon contracts.—The law acts, not upon matters of right, of contract, of stipulation; if it did, it would be violative of all principle to give it a construction that would render it retroactive; but it is designed to limit the exercise of executive discretion. (1843) 4 Op. Atty-Gen. 191.

The term "authorized by law," as used in this Act, must be construed as equivalent to the expression "authorized by Act of Congress;" and in looking for the authority of law to warrant these payments, researches are to be limited to the provisions which Congress has made upon this subject; and to bring a case within the exception contained in this section not only must the money be appropriated by an Act of Congress, but it must be expressly appropriated for the particular service for the rendition of which it is claimed as a compensation. (1839) 3 Op. Atty-Gen. 439.

Extra official services.—The statutes do not preclude an officer from receiving compensation other than his salary for services rendered the government in an employment which has no affinity or connection with his official duty. *Meigs v. U. S.* (1884) 19 Ct. Cl. 497.

Compensation for what extra services.—No allowance beyond his fixed compensation can be made except for the performance of certain duties required by law to be performed, for which the law grants a certain compensation to be paid, and which have no connection with the duties of the office he holds. *Converse v. U. S.*, (1858) 21 How. (U. S.) 463.

What extra service implied.—The various provisions of law forbidding extra allowance, or additional pay for extra service, imply extra service, pay, or allowance in the same office, not distinct service in distinct offices. (1857) 8 Op. Atty-Gen. 325.

It was held in (1854) 6 Op. Atty-Gen. 583, that to enable a salaried officer to recover extra compensation for services rendered to the government, it must be made to appear that the services for which extra compensation is claimed "were not such as were ordinarily attached to the duties of the office held," but were performed under "a special authority not connected with his regular official duties; or under such circumstances as rendered the extra labor and responsibility assumed by the officer in performing it necessary." See *U. S. v. Nourse*, (1832) 6 Pet. (U. S.) 470; *U. S. v. Macdaniel*, (1833) 7 Pet. (U. S.) 1; *U. S. v. Ripley*, (1833) 7 Pet. (U. S.) 18; *U. S. v. Filibrown*, (1833) 7 Pet. (U. S.) 44; *Gratiot v. U. S.*, (1846) 4 How. (U. S.) 80; *U. S. v. Buchanan*, (1850) 8 How. (U. S.) 83; *Brown v. U. S.*, (1850) 9 How. (U. S.) 487.

Allowance by head of department.—A compensation for extra services where no certain compensation is fixed by law, cannot be

allowed by the head of a department to any officer of the government who has by law a fixed and certain compensation for his services in the office he holds. Nor can it be allowed by the court or jury as a set-off in a suit brought by the United States against an officer for public money in his hands. *Converse v. U. S.*, (1858) 21 How. (U. S.) 463. See also *Whiting's Case*, (1863) 10 Op. Atty-Gen. 435; *Stubbs's Case*, (1861) 10 Op. Atty-Gen. 31; *Shirley's Claim*, (1872) 14 Op. Atty-Gen. 101.

Extra duties constituting an office.—It is immaterial so far as compensation is concerned whether an employment constitutes an office as defined in the Constitution provided the appointment was made lawfully. *Saunders v. U. S.*, (1886) 21 Ct. Cl. 408.

Dual offices.—This statute does not prohibit the holding and receiving of the salaries of two offices by one person at the same time provided the duties are not incompatible. *Saunders v. U. S.*, (1886) 21 Ct. Cl. 408; *Collins's Case*, (1879) 15 Ct. Cl. 22.

Allowance of personal expenses.—It would be a clear violation of these laws to allow an officer of the government whose compensation is specifically designated by law, in addition to that compensation, the ordinary personal expenses incurred in the performance of his official duties. (1862) 10 Op. Atty-Gen. 216.

Renunciation of pay.—Where the compensation of an officer or employee of the government is by statute fixed and certain, other officers of the government can neither increase it nor diminish it, nor take it away; and a so-called renunciation by a retired officer of his pay, exacted by the accounting officers as a condition to his receiving the salary of another office, is inoperative as a defense. *Geddes v. U. S.*, (1903) 38 Ct. Cl. 428.

Fraudulent claim for extra compensation.—"Where an office is accepted in connection with the duties of another office under an appointment which states that it carries no compensation, and is held for some years without protest, thereby misleading the appointing authority, and subsequently salary is demanded, it will be deemed a fraud in fact and in law." *Glavey v. U. S.*, (1900) 35 Ct. Cl. 242.

What persons included.—This and the following section both include in their prohibition, officers, clerks, and other persons. *U. S. v. Saunders*, (1837) 120 U. S. 126.

Extra official service of district attorney.—If a district attorney by direction of the attorney-general performs duties germane to his office, he must perform them without extra compensation; but if he is employed by the attorney-general to render services not incidental to his official duties, he may be compensated for them. *U. S. v. Garter*, (1898) 170 U. S. 527, *affirming* (1896) 31 Ct. Cl. 344.

Extra services of district attorney.—A district attorney may not receive in addition to his salary the reasonable value of his services in examining the titles to sites for public buildings, in taking a deposition in his district in an action pending in another dis-

strict, in defending officers of the army in suits against them for acts done in the line of their duties, or in preparing briefs or arguing cases in this court in which the United States is a party. *U. S. v. Ady*, (C. C. A. 1896) 76 Fed. Rep. 359.

Services of district attorneys prosecuting offenders.—District attorneys are not entitled to any compensation over and above their annual salary and stated fees for any services whatever rendered by them as such officers in the prosecution of offenders. (1840) 3 Op. Atty-Gen. 515.

Services of district attorney in post-office cases.—The district attorney of the eastern district of Pennsylvania is not entitled to extra compensation for services rendered in prosecuting for violations of the law respecting post offices. (1844) 4 Op. Atty-Gen. 347.

Services of district attorney in national bank suits.—It is not expressly provided by law that a district attorney shall receive compensation for services performed by him in conducting suits arising out of the provisions of the national banking law in which the United States or any of its officers or agents are parties. Without such express provision, compensation for services of that character cannot be taxed, allowed, or paid. Nor can the expenses of the receivership be held to include compensation to the district attorney for conducting a suit in which the receiver is a party, for the obvious reason that the statute does not expressly provide compensation for such services. Congress evidently intended to require the performance by a district attorney of all the duties imposed upon him by law, without any other remuneration than that coming from his salary, from the compensation or fees authorized to be taxed and allowed, and from such other compensation as is expressly allowed by law specifically on account of services named. *Gibson v. Peters*, (1893) 150 U. S. 342.

Services of district attorney in flowage damage cases.—It is the duty of an attorney-general under the direction of the department of justice to represent the interests of the United States in flowage damage cases, and extra compensation therefor is prohibited by this and the following section. *Colman v. U. S.*, (C. C. A. 1895) 66 Fed. Rep. 695.

What clerks included.—It may be inferred from the context that the clerks who are forbidden by this section to receive compensation for extra services are the clerks in the executive departments—that large class of clerks who are specially recognized by statute and whose compensation and duties are specially marked out. *Landram's Case*, (1880) 16 Ct. Cl. 74.

A clerk of a department is not entitled to extra compensation for any service which may be required of him in the line of his duty. *Stubbs's Case*, (1861) 10 Op. Atty-Gen. 31; *Shirley's Claim*, (1872) 14 Op. Atty-Gen. 101.

The separate duties of the several clerks in the departments, except where they are specifically designated in particular cases by

statute, are assigned to such clerks by the head of the department; and no posterior claim to extra compensation can be founded on the official acts done by a clerk, provided those acts constituted any part of the lawful general duties of the department. (1854) 6 Op. Atty-Gen. 583.

A deputy auditor of the treasury detailed to disburse a fund under the administration of the navy department and performing that service in Washington is prohibited from receiving additional compensation "unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation." *Whitaker v. U. S.*, (1892) 27 Ct. Cl. 524.

Pension clerk as secretary to Indian commissioners.—A clerk in the pension office, ordered to perform the duties of secretary to commissioners appointed to treat with a delegation of Indians, is not entitled to extra compensation therefor, but must be limited to the compensation provided by law for his services as clerk in the pension office. (1846) 4 Op. Atty-Gen. 463.

Clerk signing land patents.—A clerk in the general land office receiving a salary is not legally entitled to additional compensation or allowance for services in signing land patents. *White's Case*, (1863) 10 Op. Atty-Gen. 442.

Executive clerk serving as clerk to House committee.—This does not extend to an executive clerk who is at the same time the clerk of a standing committee of the House. Each position being authorized by law and having a salary affixed to it, the pay of the one cannot be considered as additional to that of the other. *Saunders v. U. S.*, (1886) 21 Ct. Cl. 408.

Clerks of supervisors of internal revenue.—The provisions of this section prohibiting extra compensation to departmental clerks do not extend to the clerk of a supervisor of internal revenue. *Hedrick's Case*, (1880) 16 Ct. Cl. 88.

Clerks of supervisors of internal revenue. lands.—Clerks and others holding regular appointments and receiving specific salaries thereto by law are not entitled to additional allowances for services rendered the government as agents for surveying and selling Indian land. (1839) 3 Op. Atty-Gen. 422.

Filing papers of Circuit Court commissioners.—The statute of May 28, 1896, 29 Stat. L. 184, which directed the deposit of papers of the Circuit Court commissioner, not having authorized the filing of such papers, and no provision having been made for compensating the clerk for services of receiving and retaining them in his custody, he may not recover therefor. *U. S. v. Van Duzee*, (1902) 185 U. S. 278, reversing (1900) 35 Ct. Cl. 214.

The service by the clerk in entering orders approving the marshal's accounts is strictly in the line of his duty as clerk; his per folio fees for such orders are expressly allowed by section 828 and are not "additional pay, extra allowance, or compensation in any form whatever." *U. S. v. Jones*, (1893) 147 U. S. 672.

Clerk's services drawing juries. — Construction given to this section is conclusive against the claim of the clerk for *per diem* services in the drawing of juries, or for such services as are not taxable, as orders, certificates, or the like, under section 828, fixing compensation of clerks. These services are not rendered in a distinct capacity as jury commissioner, but are incidental and germane to his regular duties as clerk. *U. S. v. King*, (1893) 147 U. S. 681.

Where collectors, naval officers, and surveyors are required by the secretary of the treasury to perform services which are unconnected with their official duties, the necessary expenses actually incurred in the performance of those extra duties may be allowed them. (1840) 3 Op. Atty-Gen. 563.

Services by collector outside district. — In case of extra services performed by a collector under the direction of the department, beyond the limits of his district, and which have in character no affinity or connection with the duties of his office, he may be allowed compensation therefor, although it exceeds the maximum for extra services of the opposite nature. *U. S. v. Austin*, (1864) 2 Cliff. (U. S.) 325, 24 Fed. Cas. No. 14,480.

Overtime of inspector of customs. — The fact that a night inspector of customs was required to work overtime, and was not excused from other duty on account of such overwork as was prescribed by the treasury regulations, will not entitle him to a claim for extra compensation, especially where he has received payment through a considerable period of time without objection or protest, and where there is no pretense of fraud or of circumstances constituting a duress. *U. S. v. Garlinger*, (1898) 169 U. S. 316, *reversing* (1895) 30 Ct. Cl. 208.

Post-office agent serving as deputy marshal. — Where a special agent of the post-office department in receipt of a fixed compensation performs services as a deputy marshal, he cannot be allowed in respect of such services anything beyond actual expenses incurred. (1876) 15 Op. Atty-Gen. 71.

Cadet engineer serving in hydrographic office. — The secretary of the navy may detail a cadet engineer for service in the hydrographic office, but the detail will not entitle the officer to additional pay. *Winchell v. U. S.*, (1892) 28 Ct. Cl. 30.

Navy agents employed to make purchases, or to perform any service for a department other than the navy department, are not entitled to extra compensation, unless compensation for the extra services is expressly authorized by law. (1840) 3 Op. Atty-Gen. 588.

A commodore's secretary cannot lawfully receive any extra allowance or compensation in any form whatever, for any service which it is possible for him to render, either within the line of his duty or outside of it. (1858) 9 Op. Atty-Gen. 260.

Officers at West Point. — The executive has no authority for allowing extra compensation to the officers at West Point, the same not being authorized by any law. (1842) 4 Op. Atty-Gen. 138.

Extra services by post-office carriers. — The eight-hour law was not intended as a door of evasion whereby a postmaster can bring into his office additional clerks for additional pay; but where the necessities of an office require the services of the carriers after their own work is done, they will be entitled to additional compensation for all in excess of eight hours, notwithstanding the provision of the Revised Statutes (sec. 1764), that no compensation "shall be made for any extra services whatever." *Letter-Carrier Cases*, (1892) 27 Ct. Cl. 244, *affirmed* (1893) 148 U. S. 124.

Under the eight-hour law the carrier is entitled to eight hours' pay whether eight hours' work be given him or not. For any excess of work on any day he is entitled to extra pay. The department cannot give him a deficit of work one day and an excess another, and make a monthly average of the number of hours employed. *Letter-Carrier Cases*, (1892) 27 Ct. Cl. 244, *affirmed* (1893) 148 U. S. 124.

A supervising architect of the treasury in the regular employ of the government at a stated salary of five thousand dollars may not recover extra compensation for rendering services not strictly appertaining to his office or position, but of the same general character and performed at the same place; there being no express promise of payment made, nor Act of Congress authorizing such payment. *Mullett v. U. S.*, (1893) 150 U. S. 566.

The chief messenger in the treasury department is not entitled to compensation over and above his salary for carrying the mails of the several offices occupying the northeast executive building, to and from the post office; but if he be required to furnish a horse for that duty, a reasonable compensation for that should be allowed. (1839) 3 Op. Atty-Gen. 473.

Watchmen are not entitled to extra compensation for labor performed in the offices during the day. (1839) 3 Op. Atty-Gen. 473.

Division of day's service. — "We are unable to accept the contention," said Mr. Justice Shiras, "that it was competent for the secretary of the treasury by passing regulations dividing a day's service into parts, to attach to each part the pay for a full day's work. By the word 'day,' in section 2733, Congress evidently meant the calendar day; and the purpose of Congress in prescribing the pay of three dollars for every day, and in forbidding any allowance or compensation for extra services, would be defeated if the regulation in question were to be construed as providing that a period of twenty-four hours might be so divided as to justify two or more payments to the same person of the amount fixed for the daily compensation." *U. S. v. Garlinger*, (1898) 169 U. S. 316.

Commissions for selling stamps. — "An assistant treasurer of the United States, to whom, without prepayment therefor, the commissioner of internal revenue furnishes for sale and distribution sealed packages of adhesive stamps, is not entitled to commissions or extra compensation for selling them."

Folger v. U. S., (1880) 103 U. S. 30, *affirming* (1877) 13 Ct. Cl. 91.

Waiver of right to extra compensation. — Where a contractor renders extra service to the government during a period of more than

six years without notice that he regards it as extra, and without demanding extra compensation, he will be held to have waived his right to it. *Whitsell v. U. S.*, (1898) 34 Ct. Cl. 5.

Sec. 1765. [*Extra allowances.*] No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation. [*R. S.*]

Act of March 3, 1839, ch. 82, 5 Stat. L. 349; Act of Aug. 23, 1842, ch. 183, 5 Stat. L. 510.

See notes under preceding sections.

Since the Act of 1842 no officer whose pay is fixed by law or regulation is lawfully entitled to any additional pay, extra allowance, or compensation in any form whatever, for any other duty or service, unless the same shall be authorized by law, and the prohibition therefor, explicitly set forth, that it is for additional pay or extra compensation. (1849) 5 Op. Atty.-Gen. 74.

When applicable. — This section applies only to cases where regular and extra compensation are given for discharge of duties or rendition of services incompatible with each other. *U. S. v. Evans*, (1885) 4 Mackey (D. C.) 281.

Conditions necessary to recover extra pay. — "It would be difficult," said Sanborn, J., "to state more clearly than these provisions of the Acts of Congress do the rule that the compensation which they prescribed for the discharge of the duties of the office of district attorney shall be his only compensation, or to prohibit more positively the allowance of any additional compensation 'for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.' They impose three conditions precedent to the recovery by a district attorney of any compensation beyond that prescribed by these statutes, namely: the services must have been such as he was not required to perform in the discharge of the duties of his office; the extra compensation for his services must have been authorized by law; and there must have been an appropriation therefor which explicitly stated that it was for such extra compensation." *U. S. v. Ady*, (C. C. A. 1896) 76 Fed. Rep. 359.

Nature of appropriation necessary. — It is not enough to find an Act of Congress authorizing a service and making an appropriation to pay for it. This would be sufficient providing the person rendering the service were not an officer or other person entitled to a fixed compensation. If he is, and he claims an extra compensation for an extra service, he must produce an appropriation which explicitly sets forth that it is made for such additional compensation; that is, he must show not only that Congress contemplated

and provided for a service and payment therefor, but that they contemplated and explicitly provided that if it should be rendered by one already entitled to a fixed compensation he should nevertheless receive in addition thereto the compensation provided for such service. And the addition of such compensation to a fixed compensation is not to be inferred from any equitable considerations, but must be found explicitly declared in the law itself. *U. S. v. Converse*, (1858) 21 Law Rep. 593, 25 Fed. Cas. No. 14,848. This case was reversed on somewhat different grounds, 21 How. (U. S.) 463.

General appropriation for particular object. — In case of a general appropriation of a sum of money for the accomplishment of a particular object, no part of it can be paid to a person receiving an annual salary, or pay and emoluments fixed by law, for any services he might render in relation to it, which services are not directed to be paid by the Act. (1839) 3 Op. Atty.-Gen. 439.

Appropriation for particular service. — Extra compensation to persons entitled to salary may be allowed only where money shall have been appropriated for the particular service for the rendition of which it is claimed as a compensation. (1839) 3 Op. Atty.-Gen. 439.

Applying contingent fund. — No portion of the contingent fund of a department can be applied to the payment of extra services rendered by any person receiving an annual salary, or whose pay or emoluments are fixed by law; because no particular services are designated in the Acts making such appropriations, to which the money or any part of it is to be applied. (1839) 3 Op. Atty.-Gen. 439.

When extra compensation is authorized. — Where the service in question is one required by law, but not of any particular official, and compensation therefor is fixed by competent authority and is appropriated, the officer who, under due authorization, performs the service is entitled to the compensation. (1877) 15 Op. Atty.-Gen. 608. See also *Eveleth's Case*, (1882) 17 Op. Atty.-Gen. 321.

Services connected with official duties. — This legislation prohibits an officer of any branch of the government from receiving additional or extra compensation for any service rendered by him if the service so rendered have any affinity or connection with the duty of his office, unless such compensation

is "authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation." (1891) 20 Op. Atty.-Gen. 221.

It is only when extra and additional duties are imposed upon an officer as a part of his duty, and he is bound to obey and perform them, that such officer is not entitled to and cannot receive extra pay unless it is fixed by law, and "the appropriation therefor explicitly states that it is for such additional pay." *U. S. v. Stowe*, (1884) 19 Fed. Rep. 807.

The phrase "any other service whatever" seems to be construed by the context "disbursement of public money, or for any other service or duty whatsoever," which implies that reference is intended to service of an officer in the line of his duty, and under his particular appointment, not specific service appertaining to another and a distinct commission. (1857) 8 Op. Atty.-Gen. 325.

Where a service which cannot legally be required of an officer is rendered with the consent of his superior for another department having no official control of him, and is a service within the lawful discretion of the department employing him, he may receive additional pay therefor, notwithstanding the Revised Statutes (sec. 1765). *Collier v. U. S.*, (1887) 22 Ct. Cl. 125.

Disbursement not required by office. — Extra compensation cannot be allowed to an officer because he has disbursed public money which his office did not require him to disburse. *Browne v. U. S.*, (1851) 1 Curt. (U. S.) 15, 4 Fed. Cas. No. 2,036.

When salary, etc., are fixed. — The "salary," "pay," or "emoluments" of such "officer" or "person" must be "fixed by law or regulation," in order to bring him within the provisions of this section. A "salary" is "fixed" when it is at a stipulated rate for a definite period of time. A "pay" or "emolument" is "fixed" when the amount of it is agreed upon and the service for which it is to be given defined. A salary, pay, or emolument is fixed by law when the amount is named in a general order, promulgated under provisions of law, and applicable to a class or classes of persons. *Hedrick's Case*, (1880) 16 Ct. Cl. 88.

Pay fixed by order. — If the pay of a person in the public service is not fixed by "law or regulations," but is specially fixed by the order or instruction of the secretary of the treasury, the person is not within the prohibition of this statute. *Landram's Case*, (1880) 16 Ct. Cl. 74.

"Regulations" and "instructions" distinguished. — A "regulation" affects a class or classes of officers; an "instruction" is a direction to govern the conduct of the particular officer to whom it is addressed. *Landram's Case*, (1880) 16 Ct. Cl. 74.

It was open to the secretary of the treasury to prescribe the allowances to collectors or the payment of distillery surveyors in the form of a regulation or in the form of an instruction. In the former case it would have brought them within the terms of section 1765; in the latter case they would have been

outside those terms. *Landram's Case*, (1880) 16 Ct. Cl. 74.

The appointments issued by the commissioner of internal revenue to distillery surveyors, though they practically had the same executive operation as "regulations," were not regulations but "instructions," and consequently do not bring the case of a distillery surveyor within the statutory prohibition against dual or extra compensation. *Landram's Case*, (1880) 16 Ct. Cl. 74.

A deputy marshal is not an officer, "or any other person whose salary, pay, or emoluments are fixed by law or regulation." *Matthews v. U. S.*, (1897) 32 Ct. Cl. 123, *affirmed* on other grounds in (1899) 173 U. S. 381.

Collectors are "officers" or persons "whose salaries or whose pay or emoluments are fixed by law and regulations." (1843) 4 Op. Atty.-Gen. 249.

Services of district attorney in condemnation proceedings. — It is the duty of the district attorney to represent the United States in proceedings for the condemnation of land, and his attendance in court on such proceedings is on the business of the United States as prescribed by R. S. sec. 824. And where no statute provides for extra or special compensation for services of that character, he is not entitled to any additional pay, extra allowance, or compensation therefor except under express appropriation for that purpose. *U. S. v. Johnson*, (1899) 173 U. S. 363.

District attorney of District of Columbia. — The district attorney and the assistant district attorney of the District of Columbia are officers whose "salary, pay, or emoluments are fixed by law," and they are not entitled to additional compensation for professional services rendered for the Rock Creek park commissioners. *Cole v. U. S.*, (1893) 28 Ct. Cl. 501.

Marshal sent to foreign country. — If a United States marshal was appointed an agent, in pursuance of section 5276, to go to a foreign country to take the delivery of a criminal, his services performed in pursuance of such an appointment would not be a duty added to or connected with the regular duties of his office as marshal. The appropriation bills provide for the payment of compensation for these services, but they do not specify the amount to be paid to such agent. But if the amount of compensation to be paid the agent was fixed by regulation of the department before his appointment, he is entitled to receive the amount so established; if the amount was not fixed by regulation, he is not entitled to compensation beyond his expenses. (1888) 19 Op. Atty.-Gen. 121.

Department clerk serving abroad. — In *Stansbury v. U. S.*, (1868) 8 Wall. (U. S.) 33, under the Act of Aug. 23, 1842, declaring that no officer of the government drawing a fixed salary shall receive additional compensation for any service unless it is authorized by law, and a specific appropriation made to pay it, an agreement by the secretary of the interior to pay a clerk in his department for services

rendered to the government by labors abroad — the clerk still holding his place and drawing his pay as clerk in the interior — was held void. See also *Stansbury's Case*, (1864) 1 Ct. Cl. 123; *Harvey's Case*, (1867) 3 Ct. Cl. 39; *Wilson's Case*, (1865) 1 Ct. Cl. 206.

Pay of clerk suspended during compensation for other work. — Where the secretary of war designates a clerk as his agent to superintend a construction authorized by Congress under an appropriation therefor, and suspends his pay as clerk and fixes a certain amount as compensation to him as such agent, he having accepted the terms of his employment as agent has no claim upon the government for compensation as clerk, but is entitled to receive pay for service as the agent, and such pay is not additional to any other compensation nor an extra allowance, nor does such a case fall within the prohibition of this section. *Eveleth's Case*, (1882) 17 Op. Atty-Gen. 321.

Treasury clerk making customs disbursements. — "A disbursing clerk in the office of the secretary of the treasury, who makes payments by direction of the secretary which should be made by a collector of customs or local disbursing agents comes within the prohibition as to extra compensation of the Revised Statutes, secs. 1763, 1764, 1765, and the Act of 20th June, 1874." *Bartlett v. U. S.*, (1890) 25 Ct. Cl. 389.

Collectors accepting and paying drafts. — The collectors of customs are prevented by these Acts from obtaining any allowance for accepting and paying drafts by the secretary of the treasury, even if such service could be considered beyond the pale of their official duties. *Hoyt v. U. S.*, (1850) 10 How. (U. S.) 109.

Disbursements by collector for customs building. — Construing this statute it was held in *U. S. v. Shoemaker*, (1868) 7 Wall. (U. S.) 338, that a collector of customs was not entitled to offset, in a suit against him by the United States, compensation for disbursements made for building a custom house and marine hospital at the port where he was collector.

Disbursing money for topographical purposes. — The secretary of war in the ordinary execution of his public duties cannot employ and compensate collectors, etc., in the revenue service for disbursing moneys appropriated for topographical purposes. (1845) 4 Op. Atty-Gen. 401.

Duties of superintendent of lighthouses outside district. — The secretary of the treasury under the Acts of Congress was authorized to appoint an agent to purchase all the supplies necessary for the lighthouse service throughout the United States, and to make the necessary disbursements therefor, and such agent was entitled to a compensation of two and a half per cent. on the amount disbursed, and the money was appropriated to pay it. The secretary had a right, under these laws, to select as agent any one already holding office, if he supposed him to

be best qualified for the duty. But he had no right to order a collector of the revenue, or any other officer of the government, to perform this duty without compensation outside of the lighthouse district of which he was superintendent, or outside of and alien to the office he held. *Converse v. U. S.*, (1858) 21 How. (U. S.) 463.

In (1843) 4 Op. Atty-Gen. 272, it was held that collectors of customs who are made superintendents of lighthouses may receive commissions on their disbursements.

Extra pay to gauger. — A gauger's pay being fixed by a general regulation, his case comes within the prohibition of this statute, and he cannot receive pay for another service rendered at the same time. *Hedrick's Case*, (1880) 16 Ct. Cl. 88.

A commissioner for the exploration and survey of the northeastern boundary cannot be allowed extra compensation by the accounting officer unless there shall be legislative action authorizing it. (1843) 4 Op. Atty-Gen. 269.

Reward for services connected with official duties. — The payment of a reward to an officer for services within the scope of his official duties is contrary to public policy. *Matthews v. U. S.*, (1897) 32 Ct. Cl. 123, *affirmed* on other grounds in (1899) 173 U. S. 381.

Reward for arrest. — Where a statute vests a discretion in the attorney-general to include or not to include, when he exercises the power to offer a reward for the arrest of certain persons, particular persons within the offer by him made, and that discretion is so availed of as not to exclude deputy marshals from taking the reward offered, it is not a case within the provisions of the above statute, and such deputy marshal is not forbidden to take such reward. *U. S. v. Matthews*, (1899) 173 U. S. 381, *affirming* (1897) 32 Ct. Cl. 123.

Sheriff in charge of U. S. prisoners. — Even if the fact that a county sheriff may possibly be constituted a United States officer by reason of his having charge of United States prisoners, still he is prohibited from receiving extra compensation for the care of such prisoners by the provisions of this section. *Avery v. Pima County*, (Ariz. 1900) 60 Pac. Rep. 702.

Extra pay for postal publication. — The Act of March 3, 1891, ch. 540, appropriating money for a new edition of the postal laws and regulations, does not authorize the postmaster-general to make an allowance to an officer of his department whom he may designate for that purpose. (1891) 20 Op. Atty-Gen. 221.

Pay of secretary ad interim. — The person appointed secretary of the treasury *ad interim* has a claim upon the government for the usual — or, if there be no usual, for a reasonable — compensation for his services in that capacity, but an appropriation is necessary. (1842) 4 Op. Atty-Gen. 122.

SEC. 3. [*Extra compensation or perquisites forbidden — exceptions.*] That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the treasury or property of the United States beyond his salary or compensation allowed by law: *Provided*, That this shall not be construed to prevent the employment and payment by the Department of Justice of district attorneys as now allowed by law for the performance of services not covered by their salaries or fees. [18 Stat. L. 109.]

This is from the Legislative, Executive, and Judicial Appropriation Act of June 20, 1874, ch. 328.

See notes under preceding sections.

District attorneys. — See JUDICIAL OFFICERS, vol. 4, p. 86 *et seq.*

Extent of section. — This statute must be confined to "compensation or perquisites" claimed officially. The words "compensation and perquisites" import this. This provision was no doubt intended to give exactness, and confine the remuneration of officers to the fees and compensation expressly allowed by the various and appropriate statutes. *U. S. v. Winston*, (C. C. A. 1896) 73 Fed. Rep. 149.

The word "payment," as here used, signifies to fix or determine the compensation for the services referred to. (1887) 19 Op. Atty.-Gen. 63.

Applicable to salaried officers only. — This Act does not apply to officers paid by fees, but is confined to civil officers who receive salaries or compensation from the public treasury. *Hartson v. U. S.*, (1886) 21 Ct. Cl. 451.

Civil officers only. — This Act relates only to "civil officers." It does not extend to the clerk of a supervisor of internal revenue; it does extend to the compensation of a gauger. *Hedrick's Case*, (1880) 16 Ct. Cl. 88.

A deputy marshal is not a civil officer receiving "a salary and compensation allowed by law." *Matthews v. U. S.*, (1897) 32 Ct. Cl. 123, *affirmed* on other grounds in (1899) 173 U. S. 381.

Customs inspector as deputy marshal. — Where an inspector of customs while holding that office renders services as a special deputy marshal under section 2031, R. S., he is prohibited by the third section of this Act from receiving any compensation for such service beyond his salary as inspector of customs. (1884) 17 Op. Atty.-Gen. 684.

Effect of proviso. — This section, however, clearly enacts a general stringent rule against any compensation, beyond the salary and fees specifically authorized by law as belonging to the office, and the proviso simply saved from repeal by implication any existing law which allowed the department of justice to pay district attorneys for services not covered by the salary and fees belonging to the office. The proviso occurs in a restrictive Act and affirmatively authorizes nothing. The question is left to depend on the existence of other laws under which the department of justice may act. *Ruhm v. U. S.*, (1895) 66 Fed. Rep. 531.

Compensation allowed by law. — Compensation

tion to district attorneys for special services duly allowed to them under a statute which authorizes their employment is "compensation allowed by law." (1885) 18 Op. Atty.-Gen. 121.

Extra services of United States attorneys. — The authority of the attorney-general or department of justice to employ and pay United States attorneys for services not covered by their salaries and fees is expressly recognized by Congress in section 3 of this Act, and R. S. sec. 299, and the annual appropriations made by Congress for that purpose. (1891) 20 Op. Atty.-Gen. 49.

This Act was passed subsequent to section 770, R. S. It was evidently contemplated at that time that there were services which a district attorney might be called upon to perform which were not covered by fees named in the statute or the salary provided for in that section. *Weed v. U. S.*, (1897) 82 Fed. Rep. 414.

That there are services in the view of Congress required by law of district attorneys and not covered by any legislation as to the compensation of district attorneys, is shown clearly by this third section. (1888) 19 Op. Atty.-Gen. 152.

District attorney defending secretary of treasury. — The secretary of the treasury being an officer of the revenue within the meaning of R. S. 827, a fee to a district attorney for defending him in a suit brought because of goods seized under his order, when duly allowed by court, is strictly compensation allowed by law within the meaning of this section. (1885) 18 Op. Atty.-Gen. 121.

Examination of land titles. — A district attorney directed and employed by the attorney-general of the United States is entitled to extra compensation for services performed and expenses incurred in investigating titles to land authorized to be acquired for the United States. *Weed v. U. S.*, (1897) 82 Fed. Rep. 414. See also (1855) 7 Op. Atty.-Gen. 46; (1866) 11 Op. Atty.-Gen. 431; (1868) 12 Op. Atty.-Gen. 416; (1887) 19 Op. Atty.-Gen. 63. These cases, however, would seem to be overruled by the decisions in *U. S. v. Johnson*, (1899) 173 U. S. 363. See JUDICIAL OFFICERS, vol. 4, p. 156.

Authority of attorney-general. — The proviso herein is a virtual recognition of the practical construction given to R. S. sec. 189, which in effect is construed to invest the attorney-general with sole authority thereafter to employ and fix the compensation of district attorneys where the performance of services in examining titles to land purchased by the United States is called for. (1887) 19 Op. Atty.-Gen. 63.

[SEC. 1.] [*Actual traveling expenses only to be allowed.*] * * * That hereafter only actual travelling expenses shall be allowed to any person holding employment or appointment under the United States, except marshals, district attorneys, and clerks of the courts of the United States and their deputies; and all allowances for mileages and transportation in excess of the amount actually paid, except as above excepted, are hereby declared illegal; and no credit shall be allowed to any of the disbursing-officers of the United States for payment or allowances in violation of this provision. * * * [18 Stat. L. 462.]

This is from the Act of March 3, 1875, ch. 133, "An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes." The same provision, without the word "hereafter" and without the exception appearing in the above text, first appeared in the similar Appropriation Act of June 16, 1874, ch. 285 (18 Stat. L. 72), to which reference is made in the following text, and which provision is superseded by the above text.

It was provided by the Act of Feb. 22, 1875, ch. 95, sec. 7, that this provision of the Act of June 16, 1874, ch. 285, should not be construed "to apply or to have applied to attorneys, marshals, or clerks of courts of the United States, their assistants, or deputies." See JUDICIAL OFFICERS, vol. 4, p. 130.

Mileage to board of visitors of Military Academy. See MILITARY ACADEMY, vol. 4, p. 884.

Mileage to board of visitors of Naval Academy. See NAVAL ACADEMY, vol. 5, p. 214.

Mileage to officers of the navy. See NAVY, vol. 5, p. 225.

Mileage to officers of army. See WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

To whom applicable.—This in its terms is applicable to every person holding employment or appointment under the United States and seems to be one of those frequent cases in which Congress in a general appropriation bill has intentionally enacted some law reaching far beyond the general scope of the bill itself. Its obvious purpose was to abolish all payments for traveling expenses in which a specific allowance per mile was made by law, and to establish the more equitable principle of paying the actual expenses of persons traveling in the service of the government. And it is to be observed that the universality of this principle is secured by the use of the two words "employment or appointment" in reference to persons serving under the government of the United States. *U. S. v. Mouat*, (1888) 124 U. S. 303.

An Indian agent is entitled under this Act and R. S. sec. 2077 to all of his traveling expenses including board while actually in transit from one station to another, but is not allowed credit for disbursements on account of board after his arrival at his destination. *U. S. v. Smith*, (1888) 35 Fed. Rep. 490.

[SEC. 1.] [*Mileage to officers—exception in favor of naval officers.*] * * * And so much of the act of June sixteenth, one thousand eight hundred and seventy-four, making appropriations for the support of the Army for the fiscal year ending June thirtieth, one thousand eight hundred and seventy-five, and for other purposes, as provides that only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States while engaged on public business, as is applicable to officers of the Navy so engaged, is hereby repealed; and the sum of eight cents per mile shall be allowed such officers while so engaged, in lieu of their actual expenses. * * * [19 Stat. L. 65.]

This is from the Naval Appropriation Act of June 30, 1876, ch. 159. See note under preceding text, and see later Acts under NAVY, vol. 5, pp. 327–329.

Nature of allowance.—The eight cents per mile provided for by this Act was intended to be in lieu of actual expenses when traveling on public business, and is in the nature of indemnity for actual expenses incurred and not an allowance for services rendered. *Lemly v. U. S.*, (1893) 28 Ct. Cl. 468.

To what persons applicable.—The class of persons thus relieved from the effect of the Act of 1874 is designated as "officers of the

navy." No other person holding an employment or appointment under the United States, although in the navy, was thus relieved from the effect of that Act. As this is a special statute exempting for particular reasons a certain class of persons from the operation of the general law, which was left to include all other persons in the employment of or holding appointment under the government of the United States, it is obviously proper to confine that class to those who are, properly speaking, officers of the navy. There is nothing in the context nor in the reason which may have been supposed to influence

Congress in making this exception out of the general law justifying its application to any other persons than those who are, strictly speaking, officers of the navy. *U. S. v. Mouat*, (1888) 124 U. S. 303, *reversing* (1887) 22 Ct. Cl. 293.

Officers and enlisted men distinguished.—It is generally understood that the words "officers and enlisted men" include the whole personnel of the navy; those who sign the shipping articles being regarded as enlisted men, and those who take the oath of office prescribed by R. S. sec. 1757 as officers. *Mouat v. U. S.*, (1887) 22 Ct. Cl. 293.

Petty officers are not included as officers within the meaning of this Act. *Baxter v. U. S.*, (1897) 32 Ct. Cl. 78.

A mate in the navy is not an officer of the United States within the decision of *U. S. v. Mouat*, (1888) 124 U. S. 303, and is not entitled to mileage. Money paid him for mileage is in violation of law, and may be recovered by the United States on a counterclaim. *Baxter v. U. S.*, (1897) 32 Ct. Cl. 78.

A paymaster's clerk is not an officer of the navy either by the naval regulations or by the statutes, or by any constitutional provision, and therefore he is not entitled to compensation for travel in excess of his actual traveling expenses. *U. S. v. Mouat*, (1888) 124 U. S. 303, *reversing* (1887) 22 Ct. Cl. 293.

When travel is abroad.—The question whether travel is abroad or within the United States should be determined by the termini of the journey rather than by the route actually taken. *U. S. v. Hutchins*, (1894) 151 U. S. 542.

An officer is to be understood as traveling abroad when he goes to a foreign port or place, under orders to proceed to that place, or from one foreign port to another, or from a foreign port to a home port. But where he is ordered to proceed from one place in the United States to another, and the government for its own purpose requires him to proceed by sea rather than by land, he ought not thereby to be disentitled to his mileage by the nearest traveled route. *U. S. v. Hutchins*, (1894) 151 U. S. 542.

Where the point of departure and the point of destination are both within this country a naval officer is entitled to mileage though a portion of the route is on the high seas or through a foreign country. Where the route prescribed by superior authority is complex in character, the officer may elect to take his actual expenses by the route prescribed or his mileage by the ordinary direct route. *Hutchins v. U. S.*, (1892) 27 Ct. Cl. 137.

Travel by sea or land.—In *U. S. v. Graham*, (1884) 110 U. S. 219, *affirming* (1883) 18 Ct. Cl. 83, it was held that all traveling expenses are to be paid by mileage, and there is not in either of the Acts any indication of an intention of Congress to make a distinction between travel by sea or on land.

In *U. S. v. Temple*, (1881) 105 U. S. 97, it was decided that an officer of the navy who, while engaged in public business, traveled under orders by land or sea, the travel by sea not being in a public vessel of the United States, was entitled under this Act to mileage at the rate of eight cents a mile for the whole distance traveled, whether by sea or land.

Choice of route left to officer.—When only the terminus of the journey is specified in the orders, leaving to the discretion of the officer the choice of route, his mileage should be calculated by the shortest usually traveled route, regardless of the distance actually traveled, unless some good reason is shown for the deviation. *Crosby v. U. S.*, (1887) 22 Ct. Cl. 131.

Earlier departure to avoid extra travel.—An order requiring an officer to leave for his station before a designated day does not authorize him to travel by a circuitous route if other means offer prior to the appointed day. *Crosby v. U. S.*, (1887) 22 Ct. Cl. 131.

Travel without United States.—In (1877) 15 Op. Atty.-Gen. 309, it was held, that under the Act of June 30, 1876, ch. 159, mileage is allowable to officers of the navy only when traveling on public business within the United States. For travel without the United States their actual expenses alone can be allowed. Accordingly, where a naval officer was ordered home from Hong Kong and furnished with a through ticket (such ticket being assumed to have covered his actual expenses), he is not entitled to the difference between the cost of that ticket and the mileage established by that Act.

Special service during leave of absence.—Where an officer at his home on leave of absence is ordered to a new station for special service and then back to his home before the expiration of his leave, it is traveling "when under orders" within the intent of the statute, and he is entitled to mileage therefor. *Fitzpatrick v. U. S.*, (1902) 37 Ct. Cl. 332.

Permitted return home.—When the commander of a squadron on the high seas decides that there are no habitable quarters for certain warrant officers on their ship, and that he has no alternative save that of detaching them, "with permission" to return home, he not feeling at liberty "to order" them home because their quarters have been assigned by the department, the cause of travel was public business. *Barker v. U. S.*, (1884) 19 Ct. Cl. 288.

Duties in two places.—An order of the secretary of the navy which does not relieve an officer from duty at a navy yard, but imposes upon him additional duties at another place and requires his personal attention at both places, entitles him to mileage for travel between the two places and invests him with discretion to determine when his presence is necessary at either place. *Steele v. U. S.*, (1894) 30 Ct. Cl. 7.

Sec. 1766. [*Officer in arrears.*] No money shall be paid to any person for his compensation who is in arrears to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases

where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due; and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties. [R. S.]

Act of Jan. 25, 1828, ch. 2, 4 Stat. L. 246; Act of May 20, 1836, ch. 77, 5 Stat. L. 31.

Army officers, withholding pay of. See Act of July 16, 1892, ch. 195, sec. 1, under WAR DEPARTMENT AND MILITARY ESTABLISHMENT.

Right of set-off founded on what sections.—The right of set-off, where the government is both debtor and creditor, is established and provided for by this section and by the Act of March 3, 1875, ch. 149, 18 Stat. L. 481, but it exists independently of those enactments and is founded upon R. S. sec. 236. Taggart's Case, (1881) 17 Ct. Cl. 322.

Where a person is both debtor and creditor of the government in any form, the accounting officers are required by law to set off the one indebtedness against the other and certify only the balance. Taggart's Case, (1881) 17 Ct. Cl. 322.

The word "compensation" is equivalent to the words "salary or pay" and does not include the "rations" nor "extra expenses" which are not pay proper. (1834) 2 Op. Atty.-Gen. 593.

Prior suit unnecessary.—The statute does not require that before payment is withheld the officer shall be adjudged in arrears in a suit brought against him. (1881) 17 Op. Atty.-Gen. 30.

"Forthwith" is equivalent to "without unnecessary delay." It means that there shall be no discretion to sue, or not to sue, on an account stated. As soon as the account is ready to be reported, it shall "forthwith" be reported; if not to be reported, it shall be got ready as soon as possible, consistent with the course of the accounting officers. (1842) 4 Op. Atty.-Gen. 33.

Regulations of the treasury allowing attorneys practicing before the department the percentage of claims for their preparation, prosecution, and remittance, do not control this statute or provision. Pennebaker v. U. S., (1894) 29 Ct. Cl. 35.

Necessity of immediate statement.—It is not incumbent on the executive government to pay an acknowledged defaulter his salary because his accounts cannot be immediately stated, as the Act requires they should be, for the purpose of suit, or to drive the government to a suit before it is prepared for carrying it on under that Act. (1842) 4 Op. Atty.-Gen. 33.

After time for accounting only.—The officers of the treasury are authorized to withhold the pay of officers of the government who are ascertained to be in default to the government, where the time for accounting has actually passed, but not otherwise. (1842) 4 Op. Atty.-Gen. 33.

Duties of treasury department.—"It is among the general duties of the treasury department through the accounting officers to settle all claims and demands by and against the United States, and in proper cases to

set off one against the other when the government is both debtor and creditor of the same party." *Howes v. U. S.*, (1899) 24 Ct. Cl. 170.

Power of treasury to offset claims.—The treasury is in the possession of adequate power to guard the United States against the payment of judgments or claims, where there exists in the department a demand against the claimant which is a proper subject of set-off. *The Schooner Henry and Gustavus*, (1900) 35 Ct. Cl. 393; *Labadie v. U. S.*, (1898) 33 Ct. Cl. 476.

Government interests only.—The duty of the accounting officer in the matter of set-off does not extend beyond the interests of the government. Taggart's Case, (1881) 17 Ct. Cl. 322.

Private debts and collateral securities.—No public officer can make the government either agent or trustee for the collection of private debts; nor enter into contracts relating to collateral securities for the payment of debts; nor make the government liable for neglect to collect such collaterals. Taggart's Case, (1881) 17 Ct. Cl. 322.

Parties liable to United States only.—This section applies only to cases where the party is liable to the United States, and cannot be extended to a case of payment in good faith for a service rendered, made in mistake of law. *Hedrick's Case*, (1880) 16 Ct. Cl. 88.

Effect on sureties.—This section, authorizing the salary of an officer in arrears to be withheld, forms no part of the contract with the sureties. This statute was passed to secure and protect the government and insure punctuality on the part of public officers, and although it in strong language inhibits the payment of salaries to any person in arrears, yet if an unauthorized payment is made by the proper officer whose duty it is to pass upon and allow salaries, the government is not responsible for the misconduct of such officer and the sureties are not charged on that account. (*Citing Gibbons v. U. S.*, (1868) 8 Wall. (U. S.) 274; *U. S. v. Curry*, (1848) 6 How. (U. S.) 106; *U. S. v. Vanzandt*, (1828) 11 Wheat. (U. S.) 184.) *U. S. v. Potter*, (1879) 7 Reporter 675, 27 Fed. Cas. No. 16,076.

The sections of the Revised Statutes (300, 307, 308) relating to the payment of warrants, after three years from issuance, do not form any part of the contract with the sureties of an officer appointed under this section. *U. S. v. Potter*, (1879) 7 Reporter 675, 27 Fed. Cas. No. 16,076.

Principal debtor, not surety.—The delinquent here spoken of is the "party" and the "person" against whom the prior provisions of the law are leveled; and this clause shows that in the contemplation of the lawmakers, the delinquent, whoever he might be, whether a disbursing officer or not,

was at all events to be a principal debtor and not a mere surety. *Sureties of Debtors Not Liable to Detention of Their Pay*, (1836) 3 Op. Atty-Gen. 52.

Sureties of a delinquent or defaulting principal obligor in a custom-house bond are not liable to detention of moneys then due them—the phrase, “who is in arrears to the United States,” applying only to persons who having previous transactions of a pecuniary nature with the government are found upon the settlement of those transactions to be in arrears. *Sureties of Debtors Not Liable to Detention of Their Pay*, (1836) 3 Op. Atty-Gen. 52.

Stoppage of pay of military officers.—As the payments made by military officers are frequently made under orders which they cannot disobey and amid circumstances in which the public welfare does not admit of investigation or delay, a stoppage of their pay cannot be compelled by the accounting officers of the treasury, but only by their official head, the secretary of war. *Matter of Smith*, (1889) 24 Ct. Cl. 209.

Discretion of secretary of war.—When the second comptroller reports an officer indebted to the United States, it is a matter wholly within the discretion of the secretary of war under the army regulation (article 2445) and under this section whether to order a stoppage of pay or not. *Matter of Billings*, (1888) 23 Ct. Cl. 166.

Act in obedience to orders.—The power given to the secretary of war is a reasonable one and it is to be reasonably exercised, and that it may be it is placed entirely within his discretion. That discretion requires that while the power of summarily stopping an officer's pay may be asserted against a delinquent officer or against one who, without being delinquent, has acted upon his own responsibility, it is not to be asserted against one who has acted in obedience to orders, and whose act was really the act of his military superior, which he was bound to obey and as to which he is expressly relieved from personal liability. *Matter of Smith*, (1889) 24 Ct. Cl. 209.

Effect of refusal to stop pay.—The refusal of the secretary of war to stop an officer's pay is not a decision upon the merits; it will not bind the government nor preclude the comptroller from causing a suit to be brought against the officer; it merely determines that the officer is so far without fault that the harsh and summary remedy of stopping his pay should not be resorted to. *Matter of Smith*, (1889) 24 Ct. Cl. 209.

An acting collector of internal revenue is liable for whatever public money he personally took and appropriated to his own use. *Hiland v. U. S.*, (1885) 20 Ct. Cl. 410.

Set-off against widow.—A debt of the husband to the government is not a subject of set-off against the widow, and where the debt was not an overpayment of pay, it cannot be pleaded as a payment. *Temple v. U. S.*, (1889) 24 Ct. Cl. 422.

The employment of experts in a trial before a court-martial is a matter within the legal and proper discretion of the secretary of war;

and his order to employ and pay them is official authority to the officer, who in the ordinary discharge of his duty makes the payment and protects him from the summary remedy authorized by the Revised Statutes and army regulations. *Matter of Smith*, (1889) 24 Ct. Cl. 209.

Set-off against payment authorized by Congress.—A person to whom Congress has authorized the payment of a certain sum, in satisfaction of an acknowledged debt, has an absolute title to the money which no executive officer has authority to resist, and against a claim so allowed by Congress the secretary of the treasury cannot set off a debt alleged to be due by the claimant to the United States, upon which no suit has ever been brought or judgment recovered and the justice of which is denied by the party. (1858) 9 Op. Atty-Gen. 197.

The United States like other creditors must establish their rights against a citizen by due course of law and before the proper tribunals, there being no law which gives to the secretary of the treasury the power to adjudicate upon disputed claims of the government against individuals. (1858) 9 Op. Atty-Gen. 197.

Refusal to pay assigned accounts.—Where an army officer assigned his pay account in payment of certain indebtedness, which accounts the paymaster-general declined to pay for the reason that on the maturity thereof the officer was in arrears to the United States, the refusal of the paymaster-general was in accordance with this section. (1881) 17 Op. Atty-Gen. 30.

Officer not party to compromise.—A compromise between a defaulting officer and the government will not be construed so as to shield another officer not a party to it. *Hiland v. U. S.*, (1885) 20 Ct. Cl. 410.

An officer whose indebtedness to the government is apparently covered by a compromise to which he was not a party cannot adopt so much of it as releases him from liability and reject the part which releases the government from liability to him. *Hiland v. U. S.*, (1885) 20 Ct. Cl. 410.

Officer's account twice paid.—Where an officer's account for the same month was paid twice by different paymasters—one payment being made in November and the other in December—the paymaster who made the last payment is chargeable with the overpayment. In such case the government may hold liable for the overpayment both the officer who made and the officer who received the payment. (1882) 17 Op. Atty-Gen. 425.

Loss charged to another officer.—The liability of a public officer for money taken and appropriated is not discharged by the treasury department charging the loss to another officer. The liability of a public officer is neither created nor released by bookkeeping. *Hiland v. U. S.*, (1885) 20 Ct. Cl. 410.

Settlement under mistake of law.—Where a settlement is made at the treasury between the government and a private party, in good faith, though under a mistaken construction of a statute, for services actually rendered at an honest valuation, the settlement cannot be

reopened by one party without the consent of the other, and the government cannot recover back the money so paid. *Hedrick's Case*, (1880) 16 Ct. Cl. 88.

Payment by mistake to one subsequently an official.—Where money was paid by a United States marshal under a mistake of fact to a person who subsequently became an officer in the postal service, the latter being in arrears to the United States for the amount so paid, it may be set off against his compensation as such officer. (1884) 17 Op. Atty-Gen. 677.

Accounts settled for years.—Where the ac-

counts of a mail contractor have been fully settled and no attempt has been made to disturb them for many years, they are conclusive, and no charge can be made against him which ought to have been settled then. (1858) 9 Op. Atty-Gen. 197.

Money granted to one contractor charged to another.—An Act of Congress granting money to one mail contractor or ordering the same amount to be charged upon the account of another, whose accounts have been long since settled, is void and of no effect as against the latter. (1858) 9 Op. Atty-Gen. 197.

SECS. 1767-1772. [*Relate to tenure of office.*] [*Repealed.*]

These sections were as follows:

"**SEC. 1767. [*Tenure of office.*]** Every person holding any civil office to which he has been or hereafter may be appointed by and with the advice and consent of the Senate, and who shall have become duly qualified to act therein, shall be entitled to hold such office during the term for which he was appointed, unless sooner removed by and with the advice and consent of the Senate, or by the appointment, with the like advice and consent, of a successor in his place, except as herein otherwise provided." Act of March 2, 1867, ch. 154, 14 Stat. L. 430; Act of April 5, 1869, ch. 10, 16 Stat. L. 6.

The following cases construed this section: *Parsons v. U. S.*, (1897) 167 U. S. 336; *McAllister v. U. S.*, (1891) 141 U. S. 177; *In re Marshalship*, etc., (1884) 20 Fed. Rep. 381; *Parsons v. U. S.*, (1895) 30 Ct. Cl. 231; *Howard v. U. S.*, (1887) 22 Ct. Cl. 305; (1887) 18 Op. Atty-Gen. 576; (1877) 15 Op. Atty-Gen. 406; *Anderson v. Wasatch*, etc., R. Co., 2 Utah 521.

"**SEC. 1768. [*Suspension and filling vacancies.*]** During any recess of the Senate the President is authorized, in his discretion, to suspend any civil officer appointed by and with the advice and consent of the Senate, except judges of the courts of the United States, until the end of the next session of the Senate, and to designate some suitable person, subject to be removed, in his discretion, by the designation of another, to perform the duties of such suspended officer in the mean time; and the person so designated shall take the oath and give the bond required by law to be taken and given by the suspended officer, and shall, during the time he performs the duties of such officer, be entitled to the salary and emoluments of the office, no part of which shall belong to the officer suspended. The President shall, within thirty days after the commencement of each session of the Senate, except for any office which in his opinion ought not to be filled, nominate persons to fill all vacancies in office which existed at the meeting of the Senate, whether temporarily filled or not, and also in the place of all officers suspended; and if the Senate during such session shall refuse to advise and consent to an appointment in the place of any suspended officer, then, and not otherwise, the President shall nominate another person

as soon as practicable to the same session of the Senate for the office." Act of March 2, 1867, ch. 154, 14 Stat. L. 430; Act of April 5, 1869, ch. 10, 16 Stat. L. 7.

The following cases construed this section: *Parsons v. U. S.*, (1897) 167 U. S. 337; *Steamer Coquitlam v. U. S.*, (1896) 163 U. S. 351; *McAllister v. U. S.*, (1891) 141 U. S. 177; *Jackson v. U. S.*, (C. C. A. 1900) 102 Fed. Rep. 480; *In re Marshalship*, etc., (1884) 20 Fed. Rep. 380; (1887) 18 Op. Atty-Gen. 577; (1885) 18 Op. Atty-Gen. 321; (1882) 17 Op. Atty-Gen. 476; (1879) 16 Op. Atty-Gen. 266; (1879) 16 Op. Atty-Gen. 288; (1880) 16 Op. Atty-Gen. 531; (1877) 15 Op. Atty-Gen. 406; (1877) 15 Op. Atty-Gen. 375; (1877) 15 Op. Atty-Gen. 380; (1875) 15 Op. Atty-Gen. 62; *Parsons v. U. S.*, (1895) 30 Ct. Cl. 246; *Romero v. U. S.*, (1889) 24 Ct. Cl. 339; *McAllister v. U. S.*, (1887) 22 Ct. Cl. 319; *Howard v. U. S.*, (1887) 22 Ct. Cl. 305; *Barbour's Case*, (1881) 17 Ct. Cl. 149; *Fraser's Case*, (1880) 16 Ct. Cl. 507; *Farden's Case*, (1879) 14 Ct. Cl. 587; *Farden's Case*, (1877) 13 Ct. Cl. 347.

"**SEC. 1769. [*Filling vacancies temporarily.*]** The President is authorized to fill all vacancies which may happen during the recess of the Senate by reason of death or resignation or expiration of term of office, by granting commissions which shall expire at the end of their next session thereafter. And if no appointment, by and with the advice and consent of the Senate, is made to an office so vacant or temporarily filled during such next session of the Senate, the office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until it is filled by appointment thereto by and with the advice and consent of the Senate; and during such time all the powers and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office." Act of March 2, 1867, ch. 154, 14 Stat. L. 430; Act of April 5, 1869, ch. 10, 16 Stat. L. 7.

The following cases construed this section: *McAllister v. U. S.*, (1891) 141 U. S. 178; *In re Marshalship*, etc., (1884) 20 Fed. Rep. 382; *Matter of Farrow*, (1880) 3 Fed. Rep. 113; *Romero v. U. S.*, (1889) 24 Ct. Cl. 331; (1892) 20 Op. Atty-Gen. 448; (1884) 18 Op. Atty-Gen. 28; (1880) 16 Op. Atty-Gen. 522; (1877) 15 Op. Atty-Gen. 375; (1877)

15 Op. Atty.-Gen. 398; (1877) 15 Op. Atty.-Gen. 401; (1877) 15 Op. Atty.-Gen. 207; (1877) 15 Op. Atty.-Gen. 406.

"SEC. 1770. [*Term of office not to be extended.*] Nothing in sections seventeen hundred and sixty-seven, seventeen hundred and sixty-eight, or seventeen hundred and sixty-nine shall be construed to extend the term of any office the duration of which is limited by law." Act of March 2, 1867, ch. 154, 14 Stat. L. 431.

The following case construed this section: McAllister v. U. S., (1891) 141 U. S. 178.

"SEC. 1771. [*Accepting or exercising office contrary to law.*] Every person who, contrary to the four preceding sections, accepts any appointment to or employment in any office, or holds or exercises, or attempts to hold or exercise, any such office or employment, shall be deemed guilty of a high misdemeanor, and shall be imprisoned not more than five years, or fined not more than ten thousand dollars, or both." Act of March 2, 1867, ch. 154, 14 Stat. L. 431.

The following cases construed this section: McAllister v. U. S., (1891) 141 U. S. 178; *In re Yancey*, (1886) 28 Fed. Rep. 447; *Romero v. U. S.*, (1889) 24 Ct. Cl. 337.

"SEC. 1772. [*Removing, appointing, or commissioning officer contrary to law.*] Every removal, appointment, or employment, made, had, or exercised, contrary to sections seventeen hundred and sixty-seven, to seventeen hundred and seventy, inclusive, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed a high misdemeanor, and every person guilty

thereof shall be imprisoned not more than five years, or fined not more than ten thousand dollars, or both." Act of March 2, 1867, ch. 154, 14 Stat. L. 431.

The following cases construed this section: *Romero v. U. S.*, (1889) 24 Ct. Cl. 337; *Parsons v. U. S.*, (1895) 30 Ct. Cl. 231; *McAllister v. U. S.*, (1891) 141 U. S. 178; *In re Yancey*, (1886) 28 Fed. Rep. 447.

These sections were expressly repealed by the Act of March 3, 1887, ch. 353, 24 Stat. L. 500, "An act to repeal certain sections of the Revised Statutes of the United States relating to the appointment of civil officers," as follows:

[Sec. 1.] "That sections seventeen hundred and sixty-seven, seventeen hundred and sixty-eight, seventeen hundred and sixty-nine, seventeen hundred and seventy, seventeen hundred and seventy-one, and seventeen hundred and seventy-two of the Revised Statutes of the United States are hereby repealed.

"SEC. 2. This repeal shall not affect any officer heretofore suspended under the provisions of said sections, or any designation, nomination, or appointment heretofore made by virtue of the provisions thereof."

The intention of Congress in the repeal of the tenure of office sections of the Revised Statutes was again to concede to the President the power of removal, if taken from him by the original Tenure of Office Act, and by reason of the repeal to enable him thereby to remove an officer when in his discretion he regards it for the public good, although the term of office may have been limited by the words of the statute creating the office. *Parsons v. U. S.*, (1897) 167 U. S. 327.

Sec. 1773. [*Commissions.*] The President is authorized to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointments have been advised and consented to by the Senate. [*R. S.*]

Act of March 2, 1867, ch. 154, 14 Stat. L. 431.

Seals to commissions. See SEALS.

An Act To regulate the issue and recording of the commissions of officers in several of the Departments.

[*Act of March 28, 1896, ch. 73, 29 Stat. L. 75.*]

[*Commissions of officers in departments.*] That hereafter the commissions of all officers under the direction and control of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Agriculture shall be made out and recorded in the respective Departments under which they are to serve, and the Department seal affixed thereto, any laws to the contrary notwithstanding: *Provided*, That the said seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States. [*29 Stat. L. 75.*]

"R. S. sec. 1794 required all civil commissions for Presidential appointments to be made out and recorded in the department of state. [See SEALS.]

"The Act in the text, together with those of March 18, 1874, ch. 57, relating to the post-office department; March 3, 1875, ch.

131, sec. 14, relating to the department of the interior; and Aug. 8, 1888, ch. 786, relating to the department of justice, now require all commissions to be made out and recorded in the department under which the officer is to serve." *Compilers' note, 2 Supp. R. S. 454.*

Sec. 1774. [*Notification of appointments to secretary of treasury.*] Whenever the President, without the advice and consent of the Senate, designates, authorizes, or employs any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof, and the Secretary of the Treasury shall thereupon communicate such notice to all the proper accounting and disbursing officers of his Department. [R. S.]

Act of March 2, 1867, ch. 154, 14 Stat. L. 431.

Sec. 1775. [*Notification of nominations, rejections, etc., to secretary of treasury.*] The Secretary of the Senate shall, at the close of each session thereof, deliver to the Secretary of the Treasury, and to each of the Assistant Secretaries of the Treasury, and to each of the Auditors, and to each of the Comptrollers in the Treasury, and to the Treasurer, and to the Register of the Treasury, a full and complete list, duly certified, of all the persons who have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations have been made and not confirmed and filled at such session. [R. S.]

Act of March 2, 1867, ch. 154, 14 Stat. L. 431.

Sec. 1776. [*Removal of office.*] Whenever any public office is removed by reason of sickness which may prevail in the town or city where it is located, a particular account of the cost of such removal shall be laid before Congress. [R. S.]

Act of April 21, 1806, ch. 41, 2 Stat. L. 397.

See further HEALTH AND QUARANTINE, vol. 3, p. 216 *et seq.*

Sec. 1777. [*Preservation of copies of Statutes at Large.* See STATUTES.]

Sec. 1778. [*Taking oaths, acknowledgments, etc.* See JUDICIAL OFFICERS, vol. 4, p. 165.]

An act authorizing the persons therein named to accept of certain decorations and presents therein, from foreign governments, and for other purposes.

[Act of Jan. 31, 1881, ch. 32, 21 Stat. L. 603.]

[SEC. 1.] [*Allows persons named to accept presents from foreign governments.*]

SEC. 2. [*Foreign decorations of United States officers.*] That no decoration, or other thing, the acceptance of which is authorized by this act, and no decoration heretofore accepted, or which may hereafter be accepted, by consent of Congress, by any officer of the United States, from any foreign government, shall be publicly shown or exposed upon the person of the officer so receiving the same. [21 Stat. L. 604.]

SEC. 3. [*Foreign decorations to be delivered only through department of state.*] That hereafter any present, decoration, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress. [21 Stat. L. 604.]

Sec. 183. [*Oaths, when administered by officers, etc.*] Any officer or clerk of any of the departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army detailed to conduct an investigation, and the recorder, and, if there be none, the presiding officer of any military board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation. [R. S.]

This section was amended "so as to read as" above given by the Act of March 2, 1901, ch. 809, 31 Stat. L. 951. The section originally read as follows:

"SEC. 183. Any officer or clerk of any of the Departments lawfully detailed to investigate frauds or attempts to defraud on the Government, or any irregularity or miscon-

duct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation." Res. of April 10, 1869, No. 15, 16 Stat. L. 55; Act of March 7, 1870, ch. 23, 16 Stat. L. 75.

Sec. 1779. [*Restriction upon payments for newspapers, etc.*] No executive officer, other than the heads of Departments, shall apply more than thirty dollars, annually, out of the contingent fund under his control, to pay for newspapers, pamphlets, periodicals, or other books or prints not necessary for the business of his office. [R. S.]

Act of March 3, 1839, ch. 82, 5 Stat. L. 349.

departments and bureaus. See EXECUTIVE DEPARTMENTS, vol. 3, p. 65.

Expenditure for newspapers by executive

Sec. 1780. [*Failure to make returns or reports.*] Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars and not less than one hundred. [R. S.]

Act of July 18, 1866, ch. 201, 14 Stat. L. 188.

Sec. 1781. [*Prohibition upon taking consideration for procuring contracts, offices, etc.* See BRIBERY, vol. 1, p. 712.]

See also PUBLIC CONTRACTS, ante, p. 90.

Sec. 1782. [*Upon taking compensation in matters to which United States is a party.*] No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States. [R. S.]

Act of June 11, 1864, ch. 119, 13 Stat. L. 123.

General construction.—It is illegal for an

officer of the United States to have that sort of connection with a government contract which an agent, attorney, or solicitor assumes

when he procures or aids to procure such contract for another, and when he prosecutes for another against the government any claim founded upon a government contract. These laws forbid also the receiving by officers for such services any compensation including that of an interest in the contract. But there is not in the statutes any general prohibition which prevents executive officers from contracting directly with the government as principals, in matters entirely separate from their offices and in no way connected with the performance of their duties as officers of the government, after they are procured by acquiring an interest in them. (1874) 14 Op. Atty-Gen. 482.

A member elect of Congress is, previous to as well as after taking the oath of office, debarred from acting as counsel for parties and from prosecuting claims against the government, before any department, court-martial, bureau, officer, or any civil, naval, or military commission, if he has received or has agreed to receive any compensation whatever, directly or indirectly therefor. (1872) 14 Op. Atty-Gen. 133.

A receiver of a national bank appointed under the thirty-first section of the National Banking Act (13 Stat. L. 99) is an officer of the United States. *Platt v. Beach*, (1868) 2 Ben. (U. S.) 303, 19 Fed. Cas. No. 11,215.

Assistant attorney of District of Columbia. — *Semble*, that an assistant attorney of the District of Columbia is not within the prohibition of this section. (1885) 18 Op. Atty-Gen. 161.

The words "or other matter or thing" were intended to cover kindred subjects like preliminary examinations and inquiries to enable the government, acting through its departments, bureaus, officers, etc., to determine whether a proceeding should be instituted, a charge or accusation or an arrest made, or whether a contract or claim should be made. *U. S. v. Burton*, (1904) 131 Fed. Rep. 555.

An inquiry by the postmaster-general as to whether a certain company should be forbidden the use of the mails because of its fraudulent practices is comprehended by the general wording of this Act. *U. S. v. Burton*, (1904) 131 Fed. Rep. 555.

The United States is "interested" in an inquiry pending before the post-office department to determine the question whether a company should be forbidden the use of the mails by reason of fraudulent practices, and a United States senator receiving compensation in such a proceeding in violation of this section may be indicted. *U. S. v. Burton*, (1904) 131 Fed. Rep. 555.

Sufficient indictment. — An indictment charging that the accused rendered services before the post-office department, and that he received compensation therefor (naming parties, amounts, and times of payment), the United States being interested in the matter, is a sufficient indictment, and other averments may be treated as surplusage. *U. S. v. Burton*, (1904) 131 Fed. Rep. 555.

Sec. 243. [*Restrictions upon officers of the treasury department.*] No person appointed to the office of Secretary of the Treasury, or First Comptroller, or First Auditor, or Treasurer, or Register, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea-vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of three thousand dollars and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of three thousand dollars, when recovered, shall be for the use of the person giving such information. [*R. S.*]

Act of Sept. 2, 1789, ch. 12, 1 Stat. L. 67.
See TREASURY DEPARTMENT.

Sec. 1783. [*Persons interested not to act as agents of the government.*] No officer or agent of any banking or other commercial corporation, and no member of any mercantile or trading firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation or firm, shall be employed or shall act as an officer or agent of the United States for the trans-

action of business with such corporation or firm; and every such officer, agent, or member, or person, so interested, who so acts, shall be imprisoned not more than two years, and fined not more than two thousand dollars nor less than five hundred dollars. [R. S.]

Act of March 2, 1863, ch. 67, 12 Stat. L. 698.

Purchasing claims against United States prohibited. See CLAIMS, vol. 2, p. 15.

Officer as member of contracting firm.—This section does not prevent the awarding of a contract by the postmaster-general for

furnishing coal for his department to a firm, it being the lowest bidder and one of the members thereof being an officer of that department, if the officer does not act as an officer or agent of the United States with reference to the purchase of the coal. (1903) 24 Op. Atty.-Gen. 557.

Sec. 1784. [*Prohibition of contributions, presents, etc., to superiors.*] No officer, clerk, or employé in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employés in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ. [R. S.]

Act of Feb. 1, 1870, ch. 11, 16 Stat. L. 63.

Purpose of Act.—The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties and to main-

tain proper discipline in the public service. Clearly such a purpose is within the just scope of legislative power. *Ex p. Curtis*, (1882) 106 U. S. 371.

Sec. 1785. [*Punishment for aiding, etc., in importing or trading in obscene literature.*] Whoever, being an officer, agent, or employé of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail, obscene or indecent publications, or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not less than one hundred dollars and not more than five thousand, or by imprisonment at hard labor for not less than one year nor more than ten, or both. [R. S.]

Act of March 3, 1873, ch. 258, 17 Stat. L. 599.

Obscene, etc., literature.—See IMPORTS AND EXPORTS, vol. 3, p. 317; OBSCENITY, vol. 5, p. 381; POSTAL SERVICE, vol. 5, p. 839.

Publications only.—The language of this section shows that the provisions of law prohibiting sending or receiving by mail written or printed matter relates to publications. *U. S. v. Williams*, (1880) 3 Fed. Rep. 484.

Sec. 1786. [*Proceedings against persons illegally holding office.*] Whenever any person holds office, except as a member of Congress or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution, the district attorney for the district in which such person holds office shall proceed against him by writ of quo warranto, returnable to the circuit or district court of the United States in such district, and prosecute the same to the removal of such person from office. [R. S.]

Act of May 31, 1870, ch. 114, 16 Stat. L. 143.

See note to next section.

The following cases construed this section: *In re Yancey*, (1886) 28 Fed. Rep. 451; (1882) 17 Op. Atty.-Gen. 420.

Sec. 1787. [*Penalty for illegally holding office.*] Every person who knowingly accepts or holds any office under the United States, or any State, to which he is ineligible under the third section of the fourteenth article of amendment of the Constitution, or who attempts to hold or exercise the duties of any such office, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than one year, or fined not more than one thousand dollars, or both. [R. S.]

Act of May 31, 1870, ch. 114, 16 Stat. L. 143.

The disability imposed by section 3 of the Fourteenth Amendment to the Constitution

was removed by Act of June 6, 1898, ch. 389, *supra*, p. 583. This section and section 1786, *supra*, are therefore inoperative.

Sec. 1788. [*Disbursing officers forbidden to trade in public funds or property.*] Every officer of the United States concerned in the disbursement of the revenues thereof who carries on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be deemed guilty of a misdemeanor, and punished by a fine of three thousand dollars, and shall, upon conviction, be removed from office, and forever thereafter be incapable of holding any office under the United States. [R. S.]

Act of Sept. 2, 1789, ch. 12, 1 Stat. L. 67;
Act of May 8, 1792, ch. 37, 1 Stat. L. 281;
Act of March 2 1799, ch. 22, 1 Stat. L. 695.

Purpose of section.—One of the principal objects of the restriction was to withdraw from the accounting officers of the treasury every motive of private interest in the performance of their public duties, and to guard the nation from the consequences frequently to be apprehended when the business affairs of public officers are suffered to lie commingled with the financial concerns of the country. (1847) 4 Op. Atty.-Gen. 555.

Lands sold for taxes.—In (1873) 14 Op. Atty.-Gen. 352, it was held that the purchase

of lands sold by the tax commissioners for taxes, under the direct tax law, is not within the prohibition of the eighth section of the Act of Sept. 2, 1789, ch. 12, which forbids the purchase by certain officers of "public lands or other public property."

Comptroller and auditors of treasury.—In (1847) 4 Op. Atty.-Gen. 555, it was held that the comptroller and auditors of the treasury, whose appointments were authorized by the third section of the Act of March, 3, 1817, are officers in the treasury department previously established by law and are embraced in the restrictions imposed upon certain public officers by the eighth section of the Act of 1789.

Sec. 1789. [*Collecting officers forbidden to trade in public property.*] Every officer concerned in the collection of the revenues of the United States who carries on any trade or business in any public property of the United States, or of any State, shall be deemed guilty of a misdemeanor, and punished by a fine of three thousand dollars, and shall, upon conviction, be removed from office, and forever thereafter be incapable of holding any office under the United States. [R. S.]

Act of Sept. 2, 1789, ch. 12, 1 Stat. L. 67; Act of May 8, 1792, ch. 37, 1 Stat. L. 281; Act of March 2, 1799, ch. 22, 1 Stat. L. 695.

Sec. 1790. [*Restriction on payment for services.*] No officer or clerk whose duty it is to make payments on account of the salary or wages of any officer or person employed in connection with the customs or the internal-revenue service, shall make any payment to any officer or person so employed on account of services rendered, or of salary, unless such officer or person so to be paid has made and subscribed an oath that, during the period for which he is to receive pay, neither he, nor any member of his family, has received, either personally or by the intervention of another party, any money or compensation of any description whatever, nor any promises for the same, either directly or indirectly, for services rendered or to be rendered, or acts performed or to be performed, in connection with the customs or internal revenue; or has purchased, for like services or acts, from any importer, if affiant is connected with

the customs, or manufacturer, if affiant is connected with the internal-revenue service, consignee, agent, or custom-house broker, or other person whomsoever, any merchandise, at less than regular retail market prices therefor. [R. S.]

Act of July 18, 1866, ch. 201, 14 Stat. L. 185.

Regulation as to taking oath.—The secretary of the treasury has power under section 161, R. S., to make a regulation which prescribes that the oaths to be taken by an officer of the revenue marine service or an officer or employee in any branch of the customs service to the correctness of his account for pay or salary, as required by this section and R. S. sec. 2693, shall be taken

before some person authorized to administer oaths generally. (1889) 19 Op. Atty-Gen. 401.

Fee for administering oath.—The fee paid by the officer or employe for administering this oath does not constitute a proper charge against the United States, and if charged in his account, should not be allowed in the settlement thereof. (1889) 19 Op. Atty-Gen. 401.

Sec. 5481. [*Officer of the United States guilty of extortion.*] Every officer of the United States who is guilty of extortion under color of his office shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than one year, except those officers or agents of the United States otherwise differently and specially provided for in subsequent sections of this chapter. [R. S.]

Act of March 3, 1825, ch. 65, 4 Stat. L. 118.
Sections 5481-5505 constitute chapter 6 (entitled "Official Misconduct, etc.") of title 70 (entitled "Crimes") of the Revised Statutes.

"Extortion" defined.—Extortion is the unlawful taking by an officer by color of his office of any money or thing of value that is not due him, or the taking of any money or thing of value by color of his office in excess of what is due him. *U. S. v. Waitz*, (1876) 3 Sawy. (U. S.) 473, 28 Fed. Cas. No. 16,631.

The word "extortion" implies that the money paid was extorted on the part of the one who received it, and was paid unwillingly by the party paying the same. *U. S. v. Harned*, (1890) 43 Fed. Rep. 376.

Taking illegal fees as extortion.—Congress has indicated very clearly in the Revised Statutes that it does not regard the mere taking of illegal fees as being synonymous with extortion. *U. S. v. Harned*, (1890) 43 Fed. Rep. 376.

Applicable to Alaska.—This section being passed June 22, 1874, after the cession of Alaska, is in force there from the time of its passage. *U. S. v. Carr*, (1875) 3 Sawy. (U. S.) 302, 25 Fed. Cas. No. 14,730.

Extortion by register of land office.—If a register of a land office undertakes to act as attorney for an applicant in procuring a patent, and receives from him a gross sum, and this sum is taken as well for the execution of his official duties as doing some other things relating to procuring the patent, and no specified portion of it is taken as com-

pensation for the one or the other, and the sum so taken is in excess of the fees allowed him by law, such taking of the money is extortion. *U. S. v. Waitz*, (1876) 3 Sawy. (U. S.) 473, 28 Fed. Cas. No. 16,631.

Civil surgeons appointed by the commissioner of pensions under R. S. sec. 4777 are not officers of the United States, as the commissioner of pensions is not the head of a department within the meaning of sec. 2, art. 2, of the Constitution prescribing by whom officers of the United States shall be appointed, and so are not punishable under this section for extortion in taking fees from pensioners to which they are not entitled. *U. S. v. Germaine*, (1878) 99 U. S. 508.

Extortion by Chinese inspector.—Where a Chinese inspector is guilty of extortion under color of his office in taking from certain Chinese persons sums in consideration of their being permitted to come into and remain within the United States, he can be prosecuted and subjected to fine and imprisonment under the provisions of this section. *Williams v. U. S.*, (1897) 168 U. S. 382.

Sufficient evidence for conviction.—In a trial upon an indictment founded upon this section, evidence that money in excess of legal fees was received by an officer of the United States, and that in receiving the money he acted in an official capacity and corruptly, is not sufficient to warrant a conviction without evidence tending to prove that the excess was exacted by the defendant and not paid voluntarily. *U. S. v. Harned*, (1890) 43 Fed. Rep. 376.

Sec. 5482. [*Inspectors of steamboats receiving illegal fees.* See STEAM VESSELS.]

Sec. 5483. [*Receipting for larger sums than are paid.*] Every officer charged with the payment of any of the appropriations made by any act of Congress, who pays to any clerk, or other employé of the United States, a sum

less than that provided by law, and requires such employé to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employé of the Government, and shall be imprisoned at hard labor for the term of two years. [R. S.]

Act of March 3, 1853, ch. 104, 10 Stat. L. 239.

Underpayment of letter carriers.—A postmaster is indictable under the provisions of this section, if when charged with payment of letter carriers he pays them a sum less than that provided by law, and requires them to give vouchers for an amount greater than

that actually paid to and received by them. This was so held in the case of a postmaster empowered to employ letter carriers for experimental free delivery service and to pay them therefor in accordance with the provisions of the joint resolution passed by Congress on Oct. 1, 1890. *U. S. v. Mayers*, (1896) 81 Fed. Rep. 159.

Sec. 5484. [*Extortion by internal revenue informers.* See INTERNAL REVENUE, vol. 3, p. 805.]

Secs. 5485–5487. [*Relate to pension agents, attorneys, and guardians.* See PENSIONS, vol. 5, pp. 686, 687, 694.]

Secs. 5488–5497. [*Relate to public moneys.* See PUBLIC MONEYS, *ante*, p. 537.]

Sec. 5498. [*Officers, etc., interested in claims.*] Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both. [R. S.]

Act of Feb. 26, 1853, ch. 81, 10 Stat. L. 170.

Exception from this section, see following text.

Purchase and prosecution of claims by officers.—See CLAIMS, vol. 2, p. 1.

Extent of section.—In so far as the claims prosecuted are founded upon contract with the government, this statute forbids officers as agents and attorneys from having connection with government contracts. (1874) 14 Op. Atty.-Gen. 482.

Offering argument for claims.—He who offers an argument in favor of claims against the United States "supports" the claims not only in the "manner," but by "means," and is therefore within the plain terms of the Act; and so doing he violates a penal statute and subjects himself to fine or imprisonment, or both, unless he do the act "in the discharge of his proper official duties." And it is the duty of the court not to permit any such violation in its presence, and still more not to give its sanction to it. *Tyler's Case*, (1883) 18 Ct. Cl. 25.

Accepting office by one prosecuting claims.—This section imposes no penalty for the accepting of an office or place by one who is engaged in the prosecution of claims against

the United States. (1901) 23 Op. Atty.-Gen. 533.

The acceptance of an appointment as counsel for the delegates of the United States to the Pan-American conference by a person who is engaged as an attorney in prosecuting claims before the Spanish treaty claims commission, would not subject such person to the penalties prescribed by section 5498, R. S. The penalties therein prescribed are for the prosecution of claims against the United States by one who holds an office or place such as is described in that section. While the appointee would be subject to no penalty for accepting such appointment, yet if, while holding the place of such counsel, he should engage in the prosecution of claims against the United States before that commission or other tribunal, he would be subject to the penalties therein prescribed; such person would not be an officer, but he would come within the description of a person holding a place of trust or profit under the government of the United States. (1901) 23 Op. Atty.-Gen. 533.

Compensation for legislative influence.—All contracts for a contingent compensation for obtaining legislation or to use personal

or any secret or sinister influence on legislators is void by the policy of the law. *Marshall v. Baltimore, etc., R. Co.*, (1853) 16 How. (U. S.) 314.

An officer of the bureau of military justice cannot lawfully act as counsel for a claimant in the Court of Claims in the prosecution of the claim of another army officer against the United States. (1880) 16 Op. Atty-Gen. 478.

A retired officer of the army is "an officer

of the United States," within the meaning of this section, and so cannot be an attorney for claimants in the Court of Claims. *Capt. Tyler's Case*, (1883) 18 Ct. Cl. 25. See also *In re Winthrop*, (1895) 31 Ct. Cl. 36.

Assistant attorney of District of Columbia. — This section in no part affects an assistant attorney of the District of Columbia. (1885) 18 Op. Atty-Gen. 161. See also *U. S. v. Germaine*, (1878) 99 U. S. 508.

[SEC. 1.] [*Exception of members of National Guard of District of Columbia.*] * * * Members of the National Guard of the District of Columbia, who receive compensation for their services as such shall not be held or construed to be officers of the United States, or persons holding any place of trust or profit, or discharging any official function under or in connection with any Executive Department of the Government of the United States within the provision of section fifty-four hundred and ninety-eight of the Revised Statutes of the United States. [31 Stat. L. 577.]

This is from the District of Columbia Appropriation Act of June 6, 1900, ch. 789.

Secs. 5499-5502. [*Relate to bribery.* See BRIBERY, vol. 1, pp. 714, 715.]

Sec. 5503. [*Officer of the government contracting beyond specific appropriation.* See PUBLIC CONTRACTS, ante, p. 120.]

Sec. 5504. [*Officers of United States courts failing to deposit moneys, etc.* See MONEY PAID INTO COURT, vol. 5, p. 71.]

Sec. 5505. [*Receiving loan or deposit from officer of court.* See MONEY PAID INTO COURT, vol. 5, p. 72.]

SEC. 23. [*Laws imposing penalties, to what officers applicable.*] That all acts and parts of acts imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury of the United States, or under any bureau thereof, shall be, and are hereby, applied to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue or customs law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money. [18 Stat. L. 312.]

This is from the Act of Feb. 8, 1875, ch. 36, "An act to amend existing customs and internal-revenue laws, and for other purposes."

Extent of Act. — This section does nothing more than subject persons employed, appointed, or acting under the authority "of any internal revenue or customs law, or any revenue provision of any law of the United States," to the same fines, penalties, or punishment for offenses committed by an internal-revenue officer of the treasury or under

any bureau thereof. *Williams v. U. S.*, (1897) 168 U. S. 382.

To what persons applicable. — This Act in effect reaches all persons appointed, employed, or acting under the authority of any revenue or customs law when acting officially in the performance of duties imposed upon them by law, whether such duties are strictly of a revenue character or pertain to some other branch of public service, but which Congress for convenience or the economy of administration has seen fit to impose upon such

officers. *U. S. v. Williams*, (1896) 76 Fed. Rep. 223.

The words "internal revenue or custom law" do not include the statutes providing for the exclusion of Chinese persons from this country. *Williams v. U. S.*, (1897) 168 U. S. 382.

Chinese inspectors proceeding under the Acts providing for their appointment have no connection with the revenue system of the government, although the execution of the Acts referred to is committed to the treasury

department. *Williams v. U. S.*, (1897) 168 U. S. 382.

Customs inspector as Chinese inspector.—Where a person appointed an inspector under the customs laws was designated and acting as an officer under the laws relating to Chinese emigration, he is a revenue officer required to perform duty not strictly of a revenue character, but duties of an official character imposed upon him by law, and this is sufficient to bring him within the provisions of this section. *U. S. v. Williams*, (1896) 76 Fed. Rep. 223.

Sec. 5518. [*Conspiracy to prevent accepting or holding office under United States, etc.*] If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment. [*R. S.*]

Act of July 31, 1861, ch. 33, 12 Stat. L. 284; Act of April 20, 1871, ch. 22, 17 Stat. L. 13.

See CONSPIRACY, vol. 2, p. 247; OBSTRUCTING JUSTICE, vol. 5, p. 383.

Nature of section.—This statute is in perfect harmony with sections 5508 and 5509, and instead of showing that Congress did not intend by said sections to include the case of a citizen in the exercise of a right or privilege appertaining to official station or function, it tends strongly in the other direction. *U. S. v. Patrick*, (1893) 54 Fed. Rep. 338.

The word "conspire" is used by Congress as being sufficient to show combination or confederacy, as equivalent to "agree among themselves." *Wright v. U. S.*, (C. C. A. 1901) 108 Fed. Rep. 805.

"Conspiracy" defined.—A conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end. The word "corrupt," in the sense used, means "unlawful." The intentment of this definition is that to conspire to do an unlawful act, or to conspire to accomplish a result

which may in itself be lawful, but to do it in an unlawful manner, or an unlawful agreement to accomplish an unlawful result, is a conspiracy. *U. S. v. Johnson*, (1885) 26 Fed. Rep. 682.

Who is a conspirator.—A mere presence on the occasion of the conspiracy is not sufficient to make a person guilty, but there must be some word or act; the person charged must incite, procure, or encourage the act. If one join the conspiracy at any time after the formation of the conspiracy, he becomes a conspirator and the acts of the others become his adoption. *U. S. v. Johnson*, (1885) 26 Fed. Rep. 682.

Search for illicit distillery.—A deputy collector of the internal revenue has the right under the law to proceed to search for a distillery which he supposed to be illicit, and if any one with others conspires to injure him by force, or threaten him or intimidate him, on account of the discharge of his duty, or to prevent him from its further discharge, he would be obnoxious to the provisions of this statute. *U. S. v. Johnson*, (1885) 26 Fed. Rep. 682.

SEC. 8. [*District attorneys to appear for and defend suits against officers of Congress.*] That in any action now pending, or which may be brought against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the district attorney for the district within which the action is brought, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer; and all provisions of the eighth section of the act of

July twenty-eighth, eighteen hundred and sixty-six, entitled "An act to protect the revenue, and for other purposes," and also all provisions of the sections of former acts therein referred to, so far as the same relate to the removal of suits the withholding of executions, and the paying of judgments against revenue or other officers of the United States, shall become applicable to such action and to all proceedings and matters whatsoever connected therewith, and the defense of such action shall thenceforth be conducted under the supervision and direction of the Attorney General. [18 Stat. L. 401.]

This is from the Sundry Civil Appropriation Act of March 3, 1875, ch. 130. Section 8 of the Act of July 28, 1866, ch. 298, 14 Stat. L. 329, is not in terms found in the Revised Statutes, but the provisions to which it refers, and to which reference seems to be

made in this Act, are incorporated into the Revised Statutes as sections 629, par. 12, 643, 645, 646, 827, 834, 989. See EXECUTION, vol. 3, p. 46; JUDICIAL OFFICERS, vol. 4, pp. 94, 121; JUDICIARY, vol. 4, pp. 248, 260, 264.

An Act To prevent the abatement of certain actions.

[Act of Feb. 8, 1899, ch. 131, 30 Stat. L. 822.]

[*Suits against public officers — not to abate by death, resignation, etc.*] That no suit, action, or other proceeding lawfully commenced by or against the head of any Department or Bureau or other officer of the United States in his official capacity, or in relation to the discharge of his official duties, shall abate by reason of his death, or the expiration of his term of office, or his retirement, or resignation, or removal from office, but, in such event, the Court, on motion or supplemental petition filed, at any time within twelve months thereafter, showing a necessity for the survival thereof to obtain a settlement of the questions involved, may allow the same to be maintained by or against his successor in office, and the Court may make such order as shall be equitable for the payment of costs. [30 Stat. L. 822]

"In proceedings against officers of the United States for either mandamus or injunction it was held that the death, resignation, or removal of the defendant abated the proceedings, and that relief against his successor could be sought only by a new suit. In a decision of the Supreme Court, rendered March 21, 1898, the cases are reviewed, and the court concludes: 'In view of the inconvenience, of which the present case is a striking instance, occasioned by this state of the law, it would seem desirable that Congress should provide for the difficulty by enacting that, in the case

of suits against the heads of departments abating by death or resignation, it should be lawful for the successor in office to be brought into the case by petition, or some other appropriate method.' (169 U. S. 604, 605.) The Act in the text conforms to this suggestion." *Compilers' note, 2 Supp. R. S. 940.*

A change in the personnel of the loan commission of Arizona will not abate proceedings brought against such commission in their official capacity as loan commissioners, nor against the individuals as such. *Murphy v. Utter*, (1902) 186 U. S. 95.

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Botanical Garden, see PUBLIC PROPERTY, BUILDINGS, AND GROUNDS.

Use of Potomac Park as Testing Grounds, see AGRICULTURE, vol. 1, p. 15.

See, generally, TIMBER LANDS AND FOREST PRESERVES.

Sec. 2474. [*Public park established near the head-waters of the Yellowstone River.*] The tract of land in the Territories of Montana and Wyoming, lying near the head-waters of the Yellowstone River and described as follows, to wit, commencing at the junction of Gardiner's River, with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone Lake; thence west along said parallel to the meridian passing

fifteen miles west of the most western point of Madison Lake; thence north along said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, is reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people; and all persons who locate, or settle upon, or occupy any part of the land thus set apart as a public park, except as provided in the following section, shall be considered trespassers and removed therefrom. [R. S.]

Act of March 1, 1872, ch. 24, 17 Stat. L. 32.

Wagon road across park. See Act of July 12, 1892, ch. 205, 27 Stat. L. 235.

Sec. 2475. [*Secretary of the Interior to have exclusive control of the park — removal of trespassers.*] Such public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders, within the park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years, of small parcels of ground, at such places in the park as may require the erection of buildings for the accommodation of visitors; all of the proceeds of such leases, and all other revenues that may be derived from any source connected with the park, to be expended under his direction in the management of the same, and the construction of roads and bridle-paths therein. He shall provide against the wanton destruction of the fish and game found within the park, and against their capture or destruction for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same to be removed therefrom, and generally is authorized to take all such measures as may be necessary or proper to fully carry out the objects and purposes of this section. [R. S.]

Act of March 1, 1872, ch. 24, 17 Stat. L. 33.

[*Yellowstone National Park — compensation of superintendent and employees — lease of grounds — protection.*] * * * For the protection and improvement of the Yellowstone National Park: For every purpose and object necessary for the protection, preservation, and improvement of the Yellowstone National Park, including compensation of superintendent and employees, forty thousand dollars, two thousand dollars of said amount to be paid annually to a superintendent of said park and not exceeding nine hundred dollars annually to each of ten assistants, all of whom shall be appointed by the Secretary of the Interior, and reside continuously in the park and whose duty it shall be to protect the game, timber, and objects of int[e]rest therein; the balance of the sum appropriated to be expended in the construction and improvement of suitable roads and bridges within said park, under the supervision and direction of an engineer officer detailed by the Secretary of War for that purpose;

The Secretary of the Interior may lease small portions of ground in the park, not exceeding ten acres in extent for each tract, on which may be erected hotels and the necessary outbuildings, and for a period not exceeding ten years; but such lease shall not include any of the geysers or other objects of curiosity or int[e]rest in said park, or exclude the public from the free and convenient

approach thereto; or include any ground within one quarter of a mile of any of the geysers, or the Yellowstone Falls, nor shall there be leased more than ten acres to any one person or corporation; nor shall any hotel or other buildings be erected within the park until such lease shall be executed by the Secretary of the Interior, and all contracts, agreements, or exclusive privileges heretofore made or given in regard to said park or any part thereof, are hereby declared to be invalid; nor shall the Secretary of the Interior, in any lease which he may make and execute, grant any exclusive privileges within said park, except upon the ground leased.

The Secretary of War, upon the request of the Secretary of the Interior, is hereby authorized and directed to make the necessary details of troops to prevent trespassers or intruders from entering the park for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law, and to remove such persons from the park if found therein. * * *
[22 Stat. L. 626.]

This is from the Sundry Civil Appropriation Act of March 3, 1883, ch. 143.

Partial repeal.—See Act of Aug. 3, 1894,

ch. 198, *infra*, p. 621, repealing so much of the above section as conflicts with that Act.

An act To protect the birds and animals in Yellowstone National Park, and to punish crimes in said park, and for other purposes.

[Act of May 7, 1894, ch. 72, 28 Stat. L. 73.]

[SEC. 1.] [*Yellowstone National Park — jurisdiction of United States — state process — fugitives from justice.*] That the Yellowstone National Park, as its boundaries now are defined, or as they may be hereafter defined or extended, shall be under the sole and exclusive jurisdiction of the United States; and that all the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park: *Provided, however,* That nothing in this Act shall be construed to forbid the service in the park of any civil or criminal process of any court having jurisdiction in the States of Idaho, Montana, and Wyoming. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the State of Wyoming. [28 Stat. L. 73.]

See also provisions in Act of July 10, 1890, ch. 664, sec. 2, defining boundaries of state of Wyoming, and making exception of Yellowstone National Park, given under the title STATES.

SEC. 2. [*In Wyoming judicial district.*] That said park, for all the purposes of this Act, shall constitute a part of the United States judicial district of Wyoming, and the district and circuit courts of the United States in and for said district shall have jurisdiction of all offenses committed within said park. [28 Stat. L. 73.]

SEC. 3. [*Wyoming laws applicable to crimes.*] That if any offense shall be committed in said Yellowstone National Park, which offense is not prohibited or the punishment is not specially provided for by any law of the United States or by any regulation of the Secretary of the Interior, the offender shall be subject to the same punishment as the laws of the State of Wyoming in force at the time of the commission of the offense may provide for a like offense in the said State; and no subsequent repeal of any such law of the State of Wyoming shall affect any prosecution for said offense committed within said park. [28 Stat. L. 73.]

SEC. 4. [*Hunting and fishing prohibited — regulations.*] That all hunting, or the killing, wounding, or capturing at any time of any bird or wild animal, except dangerous animals, when it is necessary to prevent them from destroying human life or inflicting an injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park by means of seines, nets, traps, or by the use of drugs or any explosive substances or compounds, or in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonderful objects within said park; and for the protection of the animals and birds in the park, from capture or destruction, or to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes in the park. Possession within the said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this Act. Any person or persons, or stage or express company or railway company, receiving for transportation any of the said animals, birds, or fish so killed, taken, or caught shall be deemed guilty of a misdemeanor, and shall be fined for every such offense not exceeding three hundred dollars. Any person found guilty of violating any of the provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities or wonderful objects within said park, or for the protection of the animals, birds and fish in the said park, shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than one thousand dollars or imprisonment not exceeding two years, or both, and be adjudged to pay all costs of the proceedings.

That all guns, traps, teams, horses, or means of transportation of every nature or description used by any person or persons within said park limits when engaged in killing, trapping, ensnaring, or capturing such wild beasts, birds, or wild animals shall be forfeited to the United States, and may be seized by the officers in said park and held pending the prosecution of any person or persons arrested under charge of violating the provisions of this Act, and upon conviction under this Act of such person or persons using said guns, traps, teams, horses, or other means of transportation such forfeiture shall be adjudicated as a penalty in addition to the other punishment provided in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior. [28 Stat. L. 73.]

On Aug. 1, 1894, the secretary of the interior promulgated the following:

The following rules and regulations for the government of the Yellowstone National Park are hereby established and made public pursuant to authority conferred by section 2475, Rev. Stat. U. S., and the Act of Congress approved May 7, 1894:

1. It is forbidden to remove or injure the sediments or incrustations around the geysers, hot springs, or steam vents;

Or to deface the same by written inscription or otherwise;

Or to throw any substance into the springs or geyser vents;

Or to injure or disturb, in any manner, or to carry off any of the mineral deposits, specimens, natural curiosities, or wonders within the park.

2. It is forbidden to ride or drive upon any of the geyser or hot spring formations or to turn loose stock to graze in their vicinity.

3. It is forbidden to cut or injure any growing timber.

Camping parties will be allowed to use dead or fallen timber for fuel.

4. Fires shall be lighted only when necessary, and completely extinguished when not longer required.

The utmost care should be exercised at all times to avoid setting fire to the timber and grass, and any one failing to comply therewith shall be peremptorily removed from the park.

5. Hunting or killing, wounding or capturing of any bird or wild animal, except dangerous animals, when necessary to prevent them from destroying life or inflicting an injury, is prohibited.

The outfits, including guns, traps, teams, horses, or means of transportation used by persons engaged in hunting, killing, trapping, ensnaring, or capturing such birds or wild animals, or in possession of game killed in the park under other circumstances than prescribed above, will be forfeited to the United States, except in cases where it is shown by satisfactory evidence that the outfit is not the property of the person or persons violating this regulation, and the actual owner thereof was not a party to such violation.

Firearms will only be permitted in the park on written permission of the superintendent thereof. On arrival at the first station of the park guard, parties having firearms will turn them over to the sergeant in charge of the station, taking his receipt for them. They will be returned to the owners on leaving the park.

6. Fishing with nets, seines, traps, or by the use of drugs or explosives, or in any other way than with hook and line is prohibited. Fishing for purposes of merchandise or profit is forbidden by law. Fishing may be prohibited by order of the superintendent of the park in any of the waters of the park, or limited therein to any specified season of the year, until otherwise ordered by the Secretary of the Interior.

7. No person will be permitted to reside permanently or to engage in any business in the park without permission, in writing, from the Department of the Interior.

The superintendent may grant authority to competent persons to act as guides and revoke the same in his discretion.

And no pack trains shall be allowed in the park unless in charge of a duly registered guide.

8. The herding or grazing of loose stock or cattle of any kind within the park, as well as the driving of such stock or cattle over the roads of the park, is strictly forbidden, except in such cases where authority therefor is granted by the Secretary of the Interior.

9. No drinking saloon or barroom will be permitted within the limits of the park.

10. Private notices or advertisements shall not be posted or displayed within the park, except such as may be necessary for the convenience and guidance of the public, upon buildings on leased ground.

11. Persons who render themselves obnoxious by disorderly conduct or bad behavior, or who violate any of the foregoing rules, will be summarily removed from the park.

Any person who violates any of the foregoing regulations will be deemed guilty of a misdemeanor, and be subjected to a fine, as provided by the Act of Congress approved May 7, 1894, "To protect the birds and animals in Yellowstone National Park and to punish crimes in said park, and for other purposes," of not more than one thousand dollars or imprisonment not exceeding two years, or both, and be adjudged to pay all costs of the proceedings.

SEC. 5. [*Commissioner for park — jurisdiction — powers and duties.*] That the United States circuit court in said district shall appoint a commissioner, who shall reside in the park, who shall have jurisdiction to hear and act upon all complaints made, of any and all violations of the law, or of the rules and regulations made by the Secretary of the Interior for the government of the park, and for the protection of the animals, birds, and fish and objects of interest therein, and for other purposes authorized by this Act. Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor, or charged with the violation of the rules and regulations, or with the violation of any provision of this Act prescribed for the government of said park, and for the protection of the animals, birds, and fish in the said park, and to try the person so charged, and, if found guilty, to impose the punishment and adjudge the forfeiture prescribed. In all cases of conviction an appeal shall lie from the judgment of said commissioner to the United States district court for the district of Wyoming, said appeal to be governed by the laws of the State of Wyoming providing for appeals in cases of misdemeanor from justices of the peace to the district court of said State; but the United States circuit court in said district may prescribe rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States district court. Said commissioner shall also have power to issue process as hereinbefore provided for the arrest of any person charged with the

commission of any felony within the park, and to summarily hear the evidence introduced, and, if he shall determine that probable cause is shown for holding the person so charged for trial, shall cause such person to be safely conveyed to a secure place for confinement, within the jurisdiction of the United States district court in said State of Wyoming, and shall certify a transcript of the record of his proceedings and the testimony in the case to the said court, which court shall have jurisdiction of the case: *Provided*, That the said commissioner shall grant bail in all cases bailable under the laws of the United States or of said State. All process issued by the commissioner shall be directed to the marshal of the United States for the district of Wyoming; but nothing herein contained shall be construed as preventing the arrest by any officer of the Government or employee of the United States in the park without process of any person taken in the act of violating the law or any regulation of the Secretary of the Interior: *Provided*, That the said commissioner shall only exercise such authority and powers as are conferred by this Act. [28 Stat. L. 74.]

SEC. 6. [*Deputy marshals — sessions of court.*] That the marshal of the United States for the district of Wyoming may appoint one or more deputy marshals for said park, who shall reside in said park, and the said United States district and circuit courts shall hold one session of said courts annually at the town of Sheridan in the State of Wyoming, and may also hold other sessions at any other place in said State of Wyoming or in said National Park at such dates as the said courts may order. [28 Stat. L. 75.]

SEC. 7. [*Pay of commissioner, marshal, attorney, and assistants.*] That the commissioner provided for in this Act shall, in addition to the fees allowed by law to commissioners of the circuit courts of the United States, be paid an annual salary of one thousand dollars, payable quarterly, and the marshal of the United States and his deputies, and the attorney of the United States and his assistants in said district, shall be paid the same compensation and fees as are now provided by law for like services in said district. [28 Stat. L. 75.]

See amendment as to salary of commissioner, Act of April 17, 1900, ch. 192, *infra*, p. 622.

SEC. 8. [*Costs and expenses, how paid.*] That all costs and expenses arising in cases under this Act, and properly chargeable to the United States, shall be certified, approved, and paid as like costs and expenses in the courts of the United States are certified, approved, and paid under the laws of the United States. [28 Stat. L. 75.]

SEC. 9. [*Jail and commissioner's office.*] That the Secretary of the Interior shall cause to be erected in the park a suitable building to be used as a jail, and also having in said building an office for the use of the commissioner, the cost of such building not to exceed five thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated upon the certificate of the Secretary as a voucher therefor. [28 Stat. L. 75.]

SEC. 10. [*Existing laws not repealed.*] That this Act shall not be construed to repeal existing laws conferring upon the Secretary of the Interior and the Secretary of War certain powers with reference to the protection, improvement, and control of the said Yellowstone National Park. [28 Stat. L. 75.]

An act concerning leases in the Yellowstone National Park.

[Act of Aug. 3, 1894, ch. 198, 28 Stat. L. 222.]

[*Lease of land in Yellowstone National Park.*] That the Secretary of the Interior is hereby authorized and empowered to lease to any person, corpora-

tion, or company, for a period not exceeding ten years, at such annual rental as the Secretary of the Interior may determine, parcels of land in the Yellowstone National Park, of not more than ten acres in extent for each tract and not in excess of twenty acres in all to any one person, corporation, or company on which may be erected hotels and necessary outbuildings: *Provided*, That such lease or leases shall not include any of the geysers or other objects of curiosity or interest in said park, or exclude the public from free and convenient approach thereto or include any ground within one-eighth of a mile of any of the geysers or the Yellowstone Falls, the Grand Canyon, or the Yellowstone River, Mammoth Hot Springs, or any object of curiosity in the park: *And provided further*, That such leases shall not convey, either expressly or by implication, any exclusive privilege within the park except upon the premises held thereunder and for the time therein granted. Every lease hereafter made for any property in said park shall require the lessee to observe and obey each and every provision in any Act of Congress, and every rule, order, or regulation made, or which may hereafter be made and published by the Secretary of the Interior concerning the use, care, management, or government of the park, or any object or property therein, under penalty of forfeiture of such lease, and every such lease shall be subject to the right of revocation and forfeiture, which shall therein be reserved by the Secretary of the Interior: *And provided further*, That persons or corporations now holding leases of ground in the park may, upon the surrender thereof, be granted new leases hereunder, and upon the terms and stipulations contained in their present leases, with such modifications, restrictions, and reservations as the Secretary of the Interior may prescribe.

This act, however, is not to be construed as mandatory upon the Secretary of the Interior, but the authority herein given is to be exercised in his sound discretion.

That so much of that portion of the Act of March third, eighteen hundred and eighty-three, relating to the Yellowstone Park, as conflicts with this Act be, and the same is hereby, repealed. [28 Stat. L. 222.]

The provision from the Act of March 3, 1883, referred to in the last paragraph above, is given *supra*, p. 617.

[SEC. 1.] [*Yellowstone National Park — salary of commissioner.*] * * * Commissioner Yellowstone Park: For salary of commissioner in Yellowstone National Park, one thousand five hundred dollars. And the provisions of section twenty-one of an Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes, approved May twenty-eighth, eighteen hundred and ninety-six, shall not be construed as impairing the right of said commissioner to receive said salary as herein provided. * * * [31 Stat. L. 133.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 17, 1900, ch. 192. The provision is repeated in the Act of April 28, 1902, ch. 594, sec. 1.

Section 21 of the Act of May 28, 1896, ch.

252, is given in JUDICIAL OFFICERS, vol. 4, p. 146.

The section in the text amends section 7 of Act of May 7, 1894, ch. 72, *supra*, p. 621.

[SEC. 1.] [*Yellowstone National Park — road extensions and improvements.*] Improvement of the Yellowstone National Park: * * * That

road extensions and improvements shall hereafter be made in said park under and in harmony with a general plan of roads and improvements to be approved by the Chief of Engineers of the Army. * * * [31 Stat. L. 625.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 794.

An act to set apart a certain tract of land in the State of California as a public park.

[Act of Sept. 25, 1890, ch. 926, 26 Stat. L. 478.]

[*Preamble.*] Whereas, the rapid destruction of timber and ornamental trees in various parts of the United States, some of which trees are the wonders of the world on account of their size and the limited number growing, makes it a matter of importance that at least some of said forests should be preserved: Therefore

[SEC. 1.] [*Reservation of public land in California for public park.*] That the tract of land in the State of California known and described as township numbered eighteen south, of range numbered thirty east, also township eighteen south range thirty-one east; and sections thirty-one, thirty-two, thirty-three, and thirty-four, township seventeen, south range thirty east, all east of Mount Diablo meridian, is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park, or pleasure ground, for the benefit and enjoyment of the people; and all persons who shall locate or settle upon, or occupy the same or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom. [26 Stat. L. 478.]

SEC. 2. [*Control—regulations—leases—game—trespassers.*] That said public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities or wonders within said park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years of small parcels of ground not exceeding five acres, at such places in said park as shall require the erection of buildings for the accommodation of visitors; all of the proceeds of said leases and other revenues that may be derived from any source connected with said park to be expended under his direction in the management of the same and the construction of roads and paths therein. He shall provide against the wanton destruction of the fish and game found within said park, and against their capture or destruction, for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and, generally, shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act. [26 Stat. L. 478.]

[SEC. 1.] [*Protection of Sequoia, Yosemite, and General Grant national parks, California.*] * * * The Secretary of War, upon the request of the Secretary of the Interior, is hereafter authorized and directed to make the necessary detail of troops to prevent trespassers or intruders from entering the

Sequoia National Park, the Yosemite National Park, and the General Grant National Park, respectively, in California, for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law or regulation for the government of said reservations, and to remove such persons from said parks if found therein. * * * [31 Stat. L. 618.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

Rights of way through these parks for elec-

tric lines, canals, ditches, etc. See PUBLIC LANDS, *ante*, p. 498.

An Act Reserving from the public lands in the State of Oregon, as a public park for the benefit of the people of the United States, and for the protection and preservation of the game, fish, timber, and all other natural objects therein, a tract of land herein described, and so forth.

[Act of May 2, 1902, ch. 320, 32 Stat. L. 202.]

[SEC. 1.] [*Crater Lake National Park established.*] That the tract of land bounded north by the parallel forty-three degrees four minutes north latitude, south by forty-two degrees forty-eight minutes north latitude, east by the meridian one hundred and twenty-two degrees west longitude, and west by the meridian one hundred and twenty-two degrees sixteen minutes west longitude, having an area of two hundred and forty-nine square miles, in the State of Oregon, and including Crater Lake, is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart forever as a public park or pleasure ground for the benefit of the people of the United States, to be known as Crater Lake National Park. [32 Stat. L. 202.]

SEC. 2. [*Control and regulation.*] That the reservation established by this Act shall be under the control and custody of the Secretary of the Interior, whose duty it shall be to establish rules and regulations and cause adequate measures to be taken for the preservation of the natural objects within said park, and also for the protection of the timber from wanton depredation, the preservation of all kinds of game and fish, the punishment of trespassers, the removal of unlawful occupants and intruders, and the prevention and extinguishment of forest fires. [32 Stat. L. 202.]

SEC. 3. [*Settlements, etc., prohibited — penalties — visitors — hotels.*] That it shall be unlawful for any person to establish any settlement or residence within said reserve, or to engage in any lumbering, or other enterprise or business occupation therein, or to enter therein for any speculative purpose whatever, and any person violating the provisions of this Act, or the rules and regulations established thereunder, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, and shall further be liable for all destruction of timber or other property of the United States in consequence of any such unlawful act: *Provided*, That said reservation shall be open, under such regulations as the Secretary of the Interior may prescribe, to all scientists, excursionists, and pleasure seekers and to the location of mining claims and the working of the same: *And provided further*, That restaurant and hotel keepers, upon application to the Secretary of the Interior, may be permitted by him to establish places of entertainment within the Crater Lake National Park for the accommodation of visitors, at places and under regulations fixed by the Secretary of the Interior, and not otherwise. [32 Stat. L. 203.]

An act for the organization, improvement, and maintenance of the National Zoological Park.

[Act of April 30, 1890, ch. 173, 26 Stat. L. 78.]

[SEC. 1.] [Appropriation.]

This section makes an appropriation, one-half out of the national treasury, and the other half "out of the revenues of the District of Columbia, for the organization, improvement, and maintenance of the National Zoological Park, to be expended under the

direction of the regents of the Smithsonian Institution, and to be drawn on their requisition and disbursed by the disbursing officer for said institution."

Report to Congress.—See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 936.

SEC. 2. [National Zoological Park under control of Smithsonian Institution.] That the National Zoological Park is hereby placed under the directions of the regents of the Smithsonian Institution, who are authorized to transfer to it any living specimens, whether of animals or plants, now or hereafter in their charge, to accept gifts for the park at their discretion, in the name of the United States, to make exchanges of specimens, and to administer the said Zoological Park for the advancement of science and the instruction and recreation of the people. [26 Stat. L. 78.]

SEC. 3. [Heads of executive departments to render aid.] That the heads of executive departments of the Government are hereby authorized and directed to cause to be rendered all necessary and practicable aid to the said regents in the acquisition of collections for the Zoological Park. [26 Stat. L. 78.]

An act authorizing the establishing of a public park in the District of Columbia.

[Act of Sept. 27, 1890, ch. 1001, 26 Stat. L. 492.]

[SEC. 1.] [Rock Creek park established.] That a tract of land lying on both sides of Rock Creek, beginning at Klinge Ford Bridge and running northwardly, following the course of said creek, of a width not less at any point than six hundred feet, nor more than twelve hundred feet, including the bed of the creek, of which not less than two hundred feet shall be on either side of said creek, south of Broad Branch road and Blagden Mill road, and of such greater width north of said roads as the commissioners designated in this act may select, shall be secured, as hereinafter set out, and be perpetually dedicated and set apart as a public park or pleasure ground for the benefit and enjoyment of the people of the United States, to be known by the name of Rock Creek Park: *Provided, however,* That the whole tract so to be selected and condemned under the provisions of this act shall not exceed two thousand acres nor the total cost thereof exceed the amount of money herein appropriated. [26 Stat. L. 492.]

SECS. 2-6. [Acquisition of land.] [Temporary.]

SEC. 7. [Control and regulations.] That the public park authorized and established by this act shall be under the joint control of the Commissioners of the District of Columbia and the Chief of Engineers of the United States Army, whose duty it shall be, as soon as practicable to lay out and prepare roadways and bridle paths to be used for driving, and for horseback riding, respectively, and footways for pedestrians; and whose duty it shall also be to make and publish such regulations as they deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoliation of all timber, animals, or curiosities within said park and their retention in their natural condition, as nearly as possible. [26 Stat. L. 495.]

An Act Declaring the Potomac Flats a public park, under the name of the Potomac Park.

[*Act of March 3, 1897, ch. 375, 29 Stat. L. 624.*]

[*Potomac Park established.*] That the entire area formerly known as the Potomac Flats and now being reclaimed, together with the tidal reservoirs, be, and the same are hereby, made and declared a public park, under the name of the Potomac Park, and to be forever held and used as a park for the recreation and pleasure of the people. [29 Stat. L. 624.]

Use of Potomac Park lands by department of agriculture as testing grounds. See AGRICULTURE, vol. 1, p. 15.

An act to establish a national military park at the battle-field of Chickamauga.

[*Act of Aug. 19, 1890, ch. 306, 26 Stat. L. 333.*]

[SECS. 1-8.] [*Chickamauga and Chattanooga National Military Park established.*]

These sections provide for the establishment of the Chickamauga and Chattanooga National Military Park in Tennessee and

Georgia, the cession and acquisition of land therefor, and the marking of battle lines, and the erection of tablets and monuments.

SEC. 9. [*Control and regulations.*] That the Secretary of War, subject to the approval of the President of the United States, shall have the power to make, and shall make all needed regulations for the care of the park and for the establishment and marking of the lines of battle and other historical features of the park. [26 Stat. L. 335.]

SEC. 10. [*Injuring or removing monuments, fences, etc. — penalty.*] That if any person shall willfully destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structure, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall willfully destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park, or any portion thereof, or shall willfully destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon such park, except by permission of the Secretary of War, or shall willfully remove or destroy any breast-works, earth-works, walls, or other defenses or shelter, on any part thereof, constructed by the armies formerly engaged in the battles on the lands or approaches to the park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed, shall for each and every such offense forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than fifty dollars, one-half to the use of the park and the other half to the informer, to be enforced and recovered, before such justice, in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed. [26 Stat. L. 335.]

SEC. 11. [*Makes appropriation.*]

Appropriations for continuing the work are made by Acts of Aug. 5, 1892, ch. 380, 27 Stat. L. 376; March 3, 1893, ch. 208, 27 Stat. L. 598; Aug. 18, 1894, ch. 301, 28 Stat. L.

403; March 2, 1895, ch. 189, 28 Stat. L. 945; Act of July 1, 1898, ch. 546, 30 Stat. L. 630. Dedication is provided for by Act of Dec. 15, 1894, ch. 6, 28 Stat. L. 595.

An Act To establish a National Military Park at the battlefield of Shiloh.

[Act of Dec. 27, 1894, ch. 12, 28 Stat. L. 597.]

[SECS. 1-6.] [Shiloh National Military Park established.]

These sections provide for the establishment of the Shiloh National Military Park at the battlefield of Shiloh, Tenn., the ac-

quisition of land, and the marking of lines of battles, etc.

SEC. 7. [Injuring or removing of monuments, fences, etc. — penalty.] That if any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structures, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy, or remove any fence, railing, inclosure, or other work for the protection or ornament of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls or other defenses or shelter on any part thereof constructed by the armies formerly engaged in the battles on the lands or approaches to the park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed or any court of competent jurisdiction shall for each and every such offense forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than fifty dollars, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed. [28 Stat. L. 598.]

SEC. 8. [Makes appropriation.]

Appropriations for continuing the work are made by the Acts of March 2, 1895, ch. 189, 28 Stat. L. 946; June 4, 1897, ch. 2, 30 Stat. L. 43; July 1, 1898, ch. 546, 30 Stat. L.

630; March 3, 1899, ch. 424, 30 Stat. L. 1105; June 6, 1900, ch. 791, 31 Stat. L. 625; March 3, 1901, ch. 853, 31 Stat. L. 1169.

An Act To establish a national military park at Gettysburg, Pennsylvania.

[Act of Feb. 11, 1895, ch. 80, 28 Stat. L. 651.]

[SECS. 1-5.] [Gettysburg National Park established.]

These sections provide for the establishment of the Gettysburg National Park on the battlefield of Gettysburg, Pa., the acceptance of

land from the Battlefield Memorial Association, the acquisition of additional land, etc.

SEC. 6. [Control and regulations.] That it shall be the duty of the Secretary of War to establish and enforce proper regulations for the custody, preservation and care of the monuments now erected or which may be hereafter erected within the limits of the said national military park; and such rules shall provide for convenient access by visitors to all such monuments within the park and the ground included therein on such days and within such hours as may be designated and authorized by the Secretary of War. [28 Stat. L. 652.]

SEC. 7. [Injuring or removing of monuments, fences, etc. — penalty.] That if any person shall destroy, mutilate, deface, injure, or remove, except

by permission of the Secretary of War, any column, statue, memorial structure, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees, growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls, or other defenses or shelter or any part thereof constructed by the armies formerly engaged in the battles on the land or approaches to the park, or shall violate any regulation made and published by the Secretary of War for the government of visitors within the limits of said park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed, shall, for each and every such offense, forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than five hundred dollars, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the county where the offense may be committed. [28 Stat. L. 652.]

SEC. 8. [*Tablet containing Lincoln's address.*]

SEC. 9. [*Makes appropriation.*]

Appropriations for continuing the work of establishing the park are made by Acts of June 11, 1896, ch. 420, 29 Stat. L. 442; June 4, 1897, ch. 2, 30 Stat. L. 44; July 1, 1898,

ch. 546, 30 Stat. L. 630; March 3, 1899, ch. 424, 30 Stat. L. 1106; June 6, 1900, ch. 791, 31 Stat. L. 625; March 3, 1901, ch. 853, 31 Stat. L. 1169.

An Act To establish a national military park to commemorate the campaign, siege, and defense of Vicksburg.

[*Act of Feb. 21, 1899, ch. 176, 30 Stat. L. 841.*]

[SECS. 1-6.] [*Vicksburg National Military Park established.*]

These sections provide for the location and establishment of the National Military Park at Vicksburg, Miss., the acquisition of land, the marking of lines of battle, etc.

SEC. 7. [*Injuring or removing of monuments, fences, etc. — penalty.*]
That if any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure or remove any monument, column, statue, memorial structure, tablet, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work intended for the protection or ornamentation of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrub that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls, or other defenses or shelter on any part thereof constructed by the armies formerly engaged in the battles, on the lands or approaches to the park, any person so offending and found guilty thereof before any United States commissioner or court, justice of the peace of the county in which the offense may be committed, or any court of competent jurisdiction, shall for each and every such offense forfeit and pay a fine in the discretion of the said commissioner or court of the United States or justice

of the peace, according to the aggravation of the offense, of not less than five nor more than five hundred dollars, one-half for the use of the park and the other half to the informant, to be enforced and recovered before such United States commissioner or court or justice of the peace or other court in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed. [30 Stat. L. 843.]

SEC. 8. [*Makes appropriation.*]

Appropriations for continuing the work are contained in the Acts of Feb. 9, 1900, ch. 14, 31 Stat. L. 14; June 6, 1900, ch. 791, 31 Stat. L. 625; March 3, 1901, ch. 853, 31 Stat. L. 1169.

[SEC. 1.] [*Lease of lands of Chickamauga and Chattanooga National Park.*] * * * Chickamauga and Chattanooga National Park * * *, That the Secretary of War may lease the lands of the park at his discretion, either to former owners or other persons, for agricultural purposes, the proceeds to be applied by the Secretary of War to the repairs of roads and the care of the park; * * * [27 Stat. L. 376.]

This is from the Sundry Civil Appropriation Act of Aug. 5, 1892, ch. 380.

[*Chickamauga and Chattanooga National Park — donations of land for road purposes.*] * * * Chickamauga and Chattanooga National Park: To enable the Secretary of War to complete the establishment of the Chickamauga and Chattanooga National Military Park, according to the terms of existing laws, including the construction of roads, surveys, maps, iron gun carriages, administration building, the purchase of land within the legal area of the park and the north point of Lookout Mountain, and for widening roads, for bronze historic tablets, repairs to bridges, one observation tower on Orchard Knob, compensation of the park commissioners and their historical assistant, continuing the restoration of the field, labor, clerical assistance, and office expenses; in all, * * * dollars. And the Secretary of War is hereby authorized to accept on behalf of the United States donations of land for road purposes. [27 Stat. L. 598.]

This is from the Sundry Civil Appropriation Act of March 3, 1893, ch. 208.

The entire first part of this paragraph is local and temporary, but the last sentence, relating to acceptance of donations of land for

road purposes, is in form general and permanent. It has not been determined whether such is its scope or whether it is limited to the subject of the paragraph in the Appropriation Act in which it appears.

[SEC. 1.] [*Gettysburg battlefield — donations of land for roads, etc.*] * * * GETTYSBURG BATTLEFIELD: * * * And the Secretary of War is hereby authorized to accept on behalf of the United States donations of land for road or other purposes. * * * [28 Stat. L. 405.]

This is from the Sundry Civil Appropriation Act of Aug. 18, 1894, ch. 301. The provision as to donations of land is preceded

by an appropriation for roads, fences, monuments, etc., similar to the provisions in the preceding text.

[SEC. 1.] [*Gettysburg National Park — lease of lands.*] * * * GETTYSBURG NATIONAL PARK: * * * And the Secretary of War may lease the lands of the park at his discretion either to former owners or other persons for agricultural purposes, the proceeds to be applied by the Secretary of War, through the proper disbursing officer, to the maintenance of the park. * * * [30 Stat. L. 44.]

This is from the Sundry Civil Appropriation Act of June 4, 1897, ch. 2, following a provision making appropriation for acqui-

sition of lands, surveys, maps, roads, fences, monuments, etc.

An Act Authorizing the Secretary of War to make certain uses of national military parks.

[Act of May 15, 1896, ch. 182, 29 Stat. L. 120.]

[SEC. 1.] [*Use of military parks — regulations.*] That in order to obtain practical benefits of great value to the country from the establishment of national military parks, said parks and their approaches are hereby declared to be national fields for military maneuvers for the Regular Army of the United States and the National Guard or Militia of the States: *Provided*, That the said parks shall be opened for such purposes only in the discretion of the Secretary of War, and under such regulations as he may prescribe. [29 Stat. L. 120.]

SEC. 2. [*Annual instruction camps — regulations — instructors.*] That the Secretary of War is hereby authorized, within the limits of appropriations which may from time to time be available for such purpose, to assemble, at his discretion, in camp at such season of the year and for such period as he may designate, at such field of military maneuvers, such portions of the military forces of the United States as he may think best, to receive military instruction there. The Secretary of War is further authorized to make and publish regulations governing the assembling of the National Guard or Militia of the several States upon the maneuvering grounds, and he may detail instructors from the Regular Army for such forces during their exercises. [29 Stat. L. 121.]

An Act To prevent trespassing upon and providing for the protection of national military parks.

[Act of March 3, 1897, ch. 372, 29 Stat. L. 621.]

[SEC. 1.] [*Injuring monuments, trees, etc., on national military parks — penalty.*] That every person who willfully destroys, mutilates, defaces, injures, or removes any monument, statue, marker, guidepost, or other structure, or who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of any national parks shall be deemed guilty of a misdemeanor, punishable by a fine of not less than ten dollars nor more than one thousand dollars for each monument, statue, marker, guidepost, or other structure, tree, shrub, or plant destroyed, defaced, injured, cut, or removed, or by imprisonment for not less than fifteen days and not more than one year, or by both fine and imprisonment. [29 Stat. L. 621.]

SEC. 2. [*Hunting, etc., forbidden — penalty.*] That every person who shall trespass upon any national parks for the purpose of hunting or shooting, or who shall hunt any kind of game thereon with gun or dog, or shall set trap or net

or other device whatsoever thereon for the purpose of hunting or catching game of any kind, shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars or by imprisonment for not less than five days or more than thirty days, or by both fine and imprisonment. [29 Stat. L. 621.]

SEC. 3. [*Arrests for violation of law — jurisdiction.*] That the superintendent or any guardian of such park is authorized to arrest forthwith any person engaged or who may have been engaged in committing any misdemeanor named in this Act, and shall bring such person before any United States commissioner or judge of any district or circuit court of the United States within either of the districts within which the park is situated, and in the district within which the misdemeanor has been committed, for the purpose of holding him to answer for such misdemeanor, and then and there shall make complaint in due form. [29 Stat. L. 621.]

SEC. 4. [*Lessee or vendor of lands refusing to give possession to United States.*] That any person to whom land lying within any national parks may have been leased, who refuses to give up possession of the same to the United States after the termination of said lease, and after possession has been demanded for the United States by any park commissioner or the park superintendent, or any person retaining possession of land lying within the boundary of said park which he or she may have sold to the United States for park purposes and have received payment therefor, after possession of the same has been demanded for the United States by any park commissioner or the park superintendent, shall be deemed guilty of trespass, and the United States may maintain an action for the recovery of the possession of the premises so withheld in the courts of the United States, according to the statutes or code of practice of the State in which the park may be situated. [29 Stat. L. 622.]

SEC. 5. [*Applies only to military parks.*] This Act shall apply only to the military parks of the United States. [29 Stat. L. 622.]

An act to protect ornamental and other trees on Government reservations and on lands purchased by the United States, and for other purposes.

[Act of March 3, 1875, ch. 151, 18 Stat. L. 481.]

[SEC. 1.] [*Injuring trees on lands of United States, how punished.*] That if any person or persons shall knowingly and unlawfully cut, or shall knowingly aid, assist, or be employed in unlawfully cutting, or shall wantonly destroy or injure, or procure to be wantonly destroyed or injured, any timber-tree or any shade or ornamental tree, or any other kind of tree, standing, growing, or being upon any land of the United States, which, in pursuance of law, have been reserved, or which have been purchased by the United States for any public use, every such person or persons so offending, on conviction thereof before any circuit or district court of the United States, shall, for every such offense, pay a fine not exceeding five hundred dollars, or shall be imprisoned not exceeding twelve months. [18 Stat. L. 481.]

SEC. 2. [*Injuring fences, walls, etc., enclosing lands of United States, how punished.*] That if any person or persons shall knowingly and unlawfully break or destroy any fence, wall, hedge, or gate inclosing any lands of the United States, which have, in pursuance of any law, been reserved or purchased by the United States for any public use, every such person so offending, on

conviction, shall, for every such offense, pay a fine not exceeding two hundred dollars, or be imprisoned not exceeding six months. [18 Stat. L. 481.]

SEC. 3. [*Injuring fences, etc., and driving cattle on lands of United States.*] That if any person or persons shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States, reserved or purchased as aforesaid, and shall drive any cattle, horses, or hogs upon the lands aforesaid for the purpose of destroying the grass or trees on said grounds, or where they may destroy the said grass or trees, or if any such person or persons shall knowingly permit his or their cattle, horses, or hogs to enter through any of said inclosures upon the lands of the United States aforesaid, where the said cattle, horses or hogs may or can destroy the grass or trees or other property of the United States on the said land, every such person or persons so offending, on conviction, shall pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding twelve months: *Provided*, That nothing in this act shall be construed to apply to unsurveyed public lands and to public lands subject to pre-emption and homestead laws, or to public lands subject to an act to promote the development of the mining resources of the United States, approved May tenth, eighteen hundred and seventy-two. [18 Stat. L. 482.]

The Act of May 10, 1872, ch. 152, 17 Stat. L. 91, referred to above, is incorporated into Revised Statutes as sections 2318-2337.

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[I. PRINTING.]

Secs. 3756-3790. [*Superseded.*]

Sections 3756-3828 constitute title 45 of the Revised Statutes entitled "Public Printing, Advertisements, and Public Documents."

Sections 3756-3790 are superseded by the various sections of the Act of Jan. 12, 1895, ch. 23, set forth below.

These sections were as follows:

"SEC. 3756. [*Joint Committee on Public Printing.*] There shall be a Joint Committee on Public Printing, consisting of three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House, who shall have the powers hereinafter stated." Act of Aug. 26, 1852, ch. 91, 10 Stat. L. 34, 35.

See Act of Jan. 12, 1895, ch. 23, sec. 1, *infra*, p. 644.

"SEC. 3757. [*Removal of delays.*] The Joint Committee on Public Printing shall have power to adopt such measures as may be deemed necessary to remedy any neglect or delay in the execution of the public printing, but no arrangement entered into by them shall take effect until it has been approved by that House of Congress to which the printing belongs, or by both Houses when the printing delayed relates to the business of

both." Act of Aug. 26, 1852, ch. 91, 10 Stat. L. 34, 35.

See Act of Jan. 12, 1895, ch. 23, sec. 2, *infra*, p. 644.

"SEC. 3758. [*Congressional Printer.*] The Senate shall elect a person, who must be a practical printer, and versed in the art of book-binding, to take charge of and manage the Government Printing Office. He shall be deemed an officer of the Senate, and shall be called the 'Congressional Printer.'" Act of Aug. 26, 1852, ch. 91, 10 Stat. L. 30; Act of Feb. 22, 1867, ch. 59, 14 Stat. L. 398.

This section was amended by the Act of June 20, 1874, ch. 328, 18 Stat. L. 88, as follows:

"That so much of the act entitled 'An act providing for the election of a Congressional Printer,' approved February twenty-second, eighteen hundred and sixty-seven, as provides for the election of such officer by the Senate, and provides that such officer shall be deemed an officer of the Senate, shall cease and determine and become of no effect from and after the date of the first vacancy occurring in said office; that the title of said officer shall hereafter be Public Printer, and he shall be deemed an officer of the United States, and

said office shall be filled by appointment by the President by and with the advice and consent of the Senate." [18 Stat. L. 88.]

Later sections on the same subject are set out under section 16 of the Act of Jan. 12, 1895, ch. 23, *infra*, p. 647. They were all superseded by the provisions of section 17 of the same Act, *infra*, p. 647.

"Sec. 3759. [*Salary, bond.*] The Congressional Printer shall receive a salary at the rate of four thousand dollars a year, and shall give bond, for the faithful discharge of his duties, in the penal sum of eighty thousand dollars, with two sureties to be approved by the Secretary of the Interior." Act of Aug. 26, 1852, ch. 91, 10 Stat. L. 30; Res. of Jan. 12, 1866, No. 2, 14 Stat. L. 347; Act of Feb. 22, 1867, ch. 59, 14 Stat. L. 398.

See Act of Jan. 12, 1895, ch. 23, sec. 17, *infra*, p. 647.

"Sec. 3760. [*Duties.*] It shall be the duty of the Congressional Printer to purchase all materials and machinery which may be necessary for the Government Printing Office; to take charge of all matter which is to be printed, engraved, lithographed, or bound; to keep an account thereof in the order in which it is received, and to cause the work to be promptly executed; to superintend all printing and binding done at the Government Printing Office, and to see that the sheets or volumes are promptly delivered to the officer who is authorized to receive them. The receipt of such officer shall be a sufficient voucher of their delivery." Res. of June 23, 1860, No. 25, 12 Stat. L. 117, 118; Act of Feb. 22, 1867, ch. 59, 14 Stat. L. 398.

See Act of Jan. 12, 1895, ch. 23, sec. 18, *infra*, p. 648.

"Sec. 3761. [*Foremen.*] There shall be a foreman of printing and a foreman of binding, who must be practically and thoroughly acquainted with their respective trades. They shall be appointed by the Congressional Printer, and shall each receive a salary at the rate of two thousand one hundred dollars a year." Res. of June 23, 1860, No. 25, 12 Stat. L. 117; Act of May 8, 1872, ch. 140, 17 Stat. L. 64.

See the Act of Jan. 12, 1895, ch. 23, sec. 44, *infra*, p. 654.

"Sec. 3762. [*Clerks.*] The Congressional Printer may employ four clerks at an annual salary of eighteen hundred dollars each; and one clerk at an annual salary of fourteen hundred dollars, to have charge of the accounts with the Departments and public offices." Act of June 23, 1860, ch. 205, 12 Stat. L. 93; Act of April 26, 1866, ch. 68, 14 Stat. L. 41; Act of May 8, 1872, ch. 140, 17 Stat. L. 83.

See the Act of Jan. 12, 1895, ch. 23, sec. 48, *infra*, p. 654.

"Sec. 3763. [*Employés.*] The Congressional Printer may employ, at such rates of wages as he may deem for the interest of the Government and just to the persons employed, such proof-readers, compositors, pressmen, binders, laborers, and other hands, as may be necessary for the execution of the orders for public printing and binding authorized by law; but he shall not, at any time, employ in the office more hands than the absolute neces-

sities of the public work may require." Act of March 3, 1853, ch. 96, 10 Stat. L. 183; Act of March 3, 1855, ch. 175, 10 Stat. L. 651; Act of June 23, 1860, ch. 205, 12 Stat. L. 93; Res. of June 23, 1860, No. 25, 12 Stat. L. 117; Act of April 26, 1866, ch. 68, 14 Stat. L. 41; Act of July 20, 1868, ch. 176, 15 Stat. L. 95.

See the Act of Jan. 12, 1895, ch. 23, sec. 49, *infra*, p. 654.

"Sec. 3764. [*Work at night.*] The Congressional Printer shall cause work to be done on the public printing, in the Government Printing Office, at night as well as through the day, during the session of Congress, when the exigencies of the public service require it." Act of Aug. 26, 1852, ch. 91, 10 Stat. L. 34.

See the Act of Jan. 12, 1895, ch. 23, sec. 47, *infra*, p. 654.

"Sec. 3765. [*Interest in printing and contracts prohibited.*] Neither the Congressional Printer, nor the foreman of printing, nor the foreman of binding, shall, during his continuance in office, have any interest, direct or indirect, in the publication of any newspaper or periodical, or in any printing, binding, engraving, or lithographing of any kind, or in any contract for furnishing paper or other material connected with the public printing, binding, lithographing, or engraving; and for every violation of this section, the party offending shall, on conviction before any court of competent jurisdiction, be imprisoned in the penitentiary for a term of not less than one nor more than five years, and shall be fined in the sum of five hundred dollars." Res. of June 23, 1860, No. 25, 12 Stat. L. 119, 120.

See the Act of Jan. 12, 1895, ch. 23, sec. 34, *infra*, p. 651.

"Sec. 3766. [*Estimates for paper.*] The Congressional Printer shall, at the beginning of each session of Congress, submit to the Joint Committee on Public Printing estimates of the quantity of paper of all descriptions which will be required for the public printing during the ensuing year." Act of July 27, 1866, ch. 287, 14 Stat. L. 305.

This section was superseded by the provisions of Act of Jan. 12, 1895, ch. 23, sec. 26. See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 891.

"Sec. 3767. [*Advertisements for paper.*] The Joint Committee on Public Printing shall fix upon standards of paper for the different descriptions of public printing, and the Congressional Printer shall, under their direction, advertise in two newspapers, published in each of the cities of Boston, New York, Philadelphia, Baltimore, Washington and Cincinnati, for sealed proposals to furnish the Government with paper, as specified in the schedule to be furnished to applicants by the Congressional Printer, setting forth in detail the quality and quantities required for the public printing." Act of July 27, 1867, ch. 287, 14 Stat. L. 305.

This section was amended by the Act of Jan. 25, 1876, ch. 4, 19 Stat. L. 2, by striking out the words "of the quality and in the quantity specified in the advertisement," in

the section as originally enacted, and inserting in lieu thereof the words "as specified in the schedule to be furnished to applicants by the Congressional Printer, setting forth in detail the quality and quantities required for the Public Printing," so as to cause it to read as above given.

See Act of Jan. 12, 1895, ch. 23, sec. 3, *infra*, p. 644.

"SEC. 3768. [*Specifications of advertisements.*] The advertisement shall specify the minimum portion of each quality of paper required for either three months, six months, or one year, as the Joint Committee on Public Printing may determine; but when the minimum portion so specified exceeds, in any case, one thousand reams, it shall state that proposals will be received for one thousand reams or more." Act of July 27, 1866, ch. 287, 14 Stat. L. 305.

See the Act of Jan. 12, 1895, ch. 23, sec. 4, *infra*, p. 644.

"SEC. 3769. [*Samples.*] The Congressional Printer shall furnish samples of the standard papers to applicants therefor." Act of July 27, 1866, ch. 287, 14 Stat. L. 305.

See the Act of Jan. 12, 1895, ch. 23, sec. 3, *infra*, p. 644.

"SEC. 3770. [*Award of contracts.*] The sealed proposals to furnish paper shall be opened in presence of the Joint Committee on Public Printing, and the contracts shall be awarded by them to the lowest and best bidder for the interest of the Government; but they shall not consider any proposal which is not accompanied by satisfactory evidence that the person making it is a manufacturer of or dealer in the description of paper which he proposes to furnish." Act of July 27, 1866, ch. 287, 14 Stat. L. 305.

See the Act of Jan. 12, 1895, ch. 23, sec. 5, *infra*, p. 645.

"SEC. 3771. [*Time for performing contracts.*] The award of each contract for furnishing paper shall designate a reasonable time for filling it." Act of July 27, 1866, ch. 287, 14 Stat. L. 305.

This and the following section 3772 were superseded by the Act of Jan. 12, 1895, ch. 23, sec. 6, *infra*, p. 645.

"SEC. 3772. [*Approval of contract.*] No contract for furnishing paper shall be valid until it has been approved by the joint committee, if made under their direction, or by the Secretary of the Interior, if made under his direction, according to the provisions of section thirty-seven hundred and seventy-five." Act of July 27, 1866, ch. 287, 14 Stat. L. 305.

This section was corrected as to a misspelling by Act of Feb. 27, 1897, ch. 69, 19 Stat. L. 249.

See note to section 3771, *supra*.

"SEC. 3773. [*Comparison of paper with standard.*] The Congressional Printer shall compare every lot of paper delivered by any contractor with the standard of quality, and shall not accept any paper which does not conform to it or is not of the stipulated weight." Act of July 27, 1866, ch. 287, 14 Stat. L. 306.

See the Act of Jan. 12, 1895, ch. 23, sec. 7, *infra*, p. 645.

"SEC. 3774. [*Disputes as to quality.*] In case of difference of opinion between the Congressional Printer and any contractor for paper, respecting its quality, the matter of difference shall be determined by the Joint Committee on Public Printing." Act of July 27, 1866, ch. 287, 14 Stat. L. 306.

See the Act of Jan. 12, 1895, ch. 23, sec. 8, *infra*, p. 645.

"SEC. 3775. [*Default of contractor.*] If any contractor shall fail to comply with his contract, either as to time of delivery, or as to quantity, quality, or weight of paper, the Congressional Printer shall report such default to the Joint Committee on Public Printing, when Congress is in session, or to the Secretary of the Interior, when Congress is not in session; and he shall under the direction of the committee, or of the Secretary of the Interior, as the case may be, enter into a new contract with the lowest and best bidder for the interest of the Government, among those whose proposals were rejected at the last opening of bids; or he shall advertise for new proposals, under the regulations hereinbefore stated; and, during the interval which may thus occur, he shall, under the direction of the Joint Committee on Public Printing, or of the Secretary of the Interior, as above provided, purchase in open market, at the lowest market-price, all paper necessary for the public printing." Act of July 27, 1866, ch. 287, 14 Stat. L. 306.

See the Act of Jan. 12, 1895, ch. 23, sec. 9, *infra*, p. 645.

"SEC. 3776. [*Contractor charged with increased cost.*] In case of the default of any contractor to furnish paper, he and his securities shall be responsible for any increase of cost to the Government in procuring a supply of such paper, which may be consequent upon such default." Act of July 27, 1866, ch. 287, 14 Stat. L. 306.

See the Act of Jan. 12, 1895, ch. 23, sec. 10, *infra*, p. 645.

"SEC. 3777. [*Report of default—suit on bond.*] The Congressional Printer shall report every such default, with a full statement of all the facts in the case, to the Solicitor of the Treasury, who shall prosecute the defaulting contractor and his securities upon their bond, in the circuit court of the United States, in the district in which such defaulting contractor resides." Act of June 27, 1866, ch. 287, 14 Stat. L. 306.

See the Act of Jan. 12, 1895, ch. 23, sec. 10, *infra*, p. 645.

"SEC. 3778. [*Purchases in open market.*] The Joint Committee on Public Printing, or, during the recess of Congress, the Secretary of the Interior, may authorize the Congressional Printer to make purchases of paper in open market, whenever they may deem the quantity required so small, or the want so immediate, as not to justify advertisement for proposals." Act of July 27, 1866, ch. 287, 14 Stat. L. 306.

See the Act of Jan. 12, 1895, ch. 23, sec. 11, *infra*, p. 646.

"SEC. 3779. [*Engraving for Congress.*] Whenever any charts, maps, diagrams, views, or other engravings are required, to illus-

trate any document ordered to be printed by either House of Congress, such engravings shall be procured by the Congressional Printer, under the direction and supervision of the committee on printing of the House ordering the same." Res. of June 23, 1860, No. 25, 12 Stat. L. 119.

See the Act of Jan. 12, 1895, ch. 23, sec. 15, *infra*, p. 647.

"SEC. 3780. [*Engraving, when to be advertised.*] When the probable cost of the maps or plates accompanying one work or document exceeds one thousand two hundred dollars, the lithographing or engraving thereof shall be awarded to the lowest and best bidder, after advertisement, by the Congressional Printer, under the direction of the Joint Committee on Public Printing. But the committee may authorize him to make immediate contracts for lithographing, or engraving whenever, in their opinion, the exigencies of the public service do not justify advertisements for proposals." Act of June 25, 1864, ch. 155, 13 Stat. L. 186.

This section was amended "so as to read as" above given by the Act of Feb. 12, 1883, ch. 43, 22 Stat. L. 414. The amendment consisted in raising the limit, which was originally two hundred and fifty dollars, to one thousand two hundred dollars, as set forth here.

The section was superseded by the Act of Jan. 12, 1895, ch. 23, sec. 15, *infra*, p. 647.

"SEC. 3781. [*Lithographing for Land Office.*] The Congressional Printer may contract for the lithographing of the maps of the several States and Territories accompanying the annual report of the Commissioner of the General Land-Office, except the connected map of the public lands east and west of the Mississippi River, accompanying the annual report of the Commissioner for the year eighteen hundred and sixty-two, with the additions thereto which may be made from time to time." Res. of Jan. 6, 1863, No. 2, 12 Stat. L. 822.

See the Act of Jan. 12, 1895, ch. 23, sec. 15, *infra*, p. 647.

"SEC. 3782. [*Engraving — execution of contracts — payment.*] The Congressional Printer shall preserve in his office samples of the paper on which any engravings or lithographs are to be furnished by contract, and he shall not receive any engraving or lithograph which is not printed on paper equal to the sample, or which is not executed in the proper manner or in the quantity contracted for, or within the time specified in the contract, unless, for special reasons, he may have extended the time. The contractor shall not be paid except upon the certificate of the Congressional Printer that the requisites have been complied with." Act of March 3, 1853, ch. 97, 10 Stat. L. 190.

See the Act of Jan. 12, 1895, ch. 23, sec. 41, *infra*, p. 653.

"SEC. 3783. [*Accountability for and issue of material.*] The Congressional Printer shall charge himself with, and be accountable for, all material received for the public use. The foremen of printing and binding shall make out estimates of the amount and kind of ma-

terial required for their respective departments, and file written requisitions therefor when it is needed. The Congressional Printer shall furnish the same to them on these requisitions, as it may be required for the public service, and they shall receipt to him and be held accountable for all materials so received." Res. of June 23, 1860, No. 25, 12 Stat. L. 117, 118.

See the Act of Jan. 12, 1895, ch. 23, sec. 32, *infra*, p. 651.

"SEC. 3784. [*Frauds of Congressional Printer.*] If the Congressional Printer shall, by himself or through others, corruptly collude or have any secret understanding with any person to defraud the United States, or whereby the United States shall be made to sustain a loss, contrary to the intent of the provisions of this Title, he shall, on conviction thereof before any court of competent jurisdiction, forfeit his office, and be imprisoned in the penitentiary for a term of not less than three nor more than seven years, and fined in the sum of three thousand dollars." Res. of June 23, 1860, No. 25, 12 Stat. L. 120.

See the Act of Jan. 12, 1895, ch. 23, sec. 33, *infra*, p. 651.

"SEC. 3785. [*Only public printing and binding allowed.*] No printing or binding which is not provided for by law shall be executed at the Government Printing Office." Res. of June 23, 1860, No. 25, 12 Stat. L. 118.

See the Act of Jan. 12, 1895, ch. 23, sec. 86, *infra*, p. 657.

"SEC. 3786. [*Printing required to be done at Government Printing Office.*] All printing, binding, and blank-books for the Senate or House of Representatives, and the Executive and Judicial Departments, shall be done at the Government Printing Office, except in cases otherwise provided by law." Res. of June 23, 1860, No. 25, 12 Stat. L. 118; Act of March 2, 1867, ch. 167, 14 Stat. L. 467; Act of July 20, 1868, ch. 177, 15 Stat. L. 111.

See the Act of Jan. 12, 1895, ch. 23, sec. 87, *infra*, p. 658.

"SEC. 3787. [*Binding at Treasury Department.*] Registered bonds and written records may be bound at the Treasury Department." Act of July 20, 1868, ch. 177, 15 Stat. L. 111.

See the Act of Jan. 12, 1895, ch. 23, sec. 84, *infra*, p. 657.

"SEC. 3788. [*Heads of Bureaus not to print reports, except, etc.*] No officer in charge of any Bureau or office in any Department shall cause to be printed, at the public expense, any report he may make to the President or to the head of the Department, except as provided for in this Title." Act of Aug. 31, 1852, ch. 108, 10 Stat. L. 98.

See the Act of Jan. 12, 1895, ch. 23, sec. 94, *infra*, p. 660.

"SEC. 3789. [*Orders and requisitions for printing.*] No printing or binding shall be done, or blank-books furnished, for either House of Congress, except on the written order of the Secretary of the Senate, or of the Clerk of the House of Representatives, respectively; or for any of the Executive Departments, except on a written requisition by

the head of such Department, or one of his assistants." Act of March 14, 1864, ch. 30, 13 Stat. L. 25; Act of June 3, 1864, ch. 107, 13 Stat. L. 118; Act of March 3, 1871, ch. 115, 16 Stat. L. 517.

See the Act of Jan. 12, 1895, ch. 23, secs. 93, 99, *infra*, pp. 659, 660.

"SEC. 3790. [*Style and form of work for Departments.*] The forms and style in which

the printing or binding ordered by any of the Departments shall be executed, the materials and size of type to be used, shall be determined by the Congressional Printer, having proper regard to economy, workmanship, and the purposes for which the work is needed." Act of June 25, 1864, ch. 155, 13 Stat. L. 186.

See the Act of Jan. 12, 1895, ch. 23, sec. 51, *infra*, p. 654.

Secs. 3791–3796. [See PUBLIC DOCUMENTS, *ante*, p. 154.]

Sec. 3797. [*Superseded.*]

This section was as follows:

"SEC. 3797. [*Mail contracts and bids, when to be printed.*] The annual report of the Postmaster-General of offers received and contracts for conveying the mail shall not be printed, unless specially ordered by either

House of Congress." Act of June 25, 1864, ch. 155, 13 Stat. L. 185.

This section was superseded by the Act of Jan. 12, 1895, ch. 23, sec. 73. See PUBLIC DOCUMENTS, *ante*, p. 162.

Secs. 3798–3801. [See PUBLIC DOCUMENTS, *ante*, pp. 154, 155.]

Sec. 3802. [*Superseded.*]

This section was as follows:

"SEC. 3802. [*Accounts with Departments for printing.*] Whenever Congress makes an appropriation for any Department or public office, to be expended 'for printing and binding to be executed under the direction of the Congressional Printer,' the Congressional Printer shall cause an account to be opened with such Department or public office, on which he shall charge for all printing and binding ordered by the head thereof, at prices

established in pursuance of law; and it shall not be lawful for him to cause to be executed any printing or binding the value of which exceeds the amount appropriated for such purpose." Act of May 8, 1872, ch. 140, 17 Stat. L. 83.

This section was amended to correct an error in spelling by Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 250. It was superseded by the Act of Jan. 12, 1895, ch. 23, secs. 89, 93, *infra*, pp. 658, 659.

Sec. 3803. [*Copies of statutes for printing.* See STATUTES.]

Sec. 3804. [*Copies of postal conventions for printing.* See POST-OFFICE DEPARTMENT, *ante*, p. 8.]

Sec. 3805. [*Printing of laws and resolutions.* See STATUTES.]

Sec. 3806. [*Printing of postal conventions.*] The Congressional Printer, on receiving from the Postmaster-General a copy of any postal convention between the Postmaster-General, on the part of the United States, and an equivalent officer of any foreign government, shall immediately cause an accurate printed copy thereof to be executed and sent in duplicate to the Postmaster-General. On the return of one of the revised duplicates, he shall at once have the marked corrections made, and cause to be printed, and sent to the Postmaster-General, any number of copies which he may order, not exceeding five hundred, and to be printed separately, and sent to the two Houses of Congress, the usual number. [R. S.]

Act of March 9, 1868, ch. 22, 15 Stat. L. 40. But see Act of Jan. 12, 1895, ch. 23, sec. 56; PUBLIC DOCUMENTS, *ante*, p. 147.

Sec. 3807. [*Laws, number to be printed for use of Senate and House.* See STATUTES.]

Sec. 3808. [*Number to be printed for distribution.* See STATUTES.]

Sec. 3809. [*Superseded.* See PUBLIC DOCUMENTS, *ante*, p. 155.]

Sec. 3810. [*Superseded.*]

This section was as follows:

"SEC. 3810. [*Printed documents, when to be delivered.*] The annual reports of the Executive Departments and the accompanying documents shall be delivered by the printer to the proper officers of each House of Congress at the first meeting thereof; and the President's message, the reports of the Executive Departments, and the abridgment of

accompanying documents, shall be so delivered on or before the third Wednesday in December next after the meeting of Congress, or as soon thereafter as may be practicable." Act of June 25, 1864, ch. 155, 13 Stat. L. 185.

It is superseded by the provisions of the Act of Jan. 12, 1895, ch. 23, sec. 73. See PUBLIC DOCUMENTS, *ante*, p. 162.

Sec. 3811. [*Report on national banks.*] When the annual report of the Comptroller of the Currency upon the national banks and banks under State and territorial laws is completed, or while it is in process of completion, if thereby the business may be sooner dispatched, the work of printing shall be commenced, under the superintendence of the Secretary, and the whole shall be printed and ready for delivery on or before the first day of December next after the close of the year to which the report relates. [*R. S.*]

Act of Jan. 30, 1863, ch. 14, 12 Stat. L. 637.

This section was amended by Act of Feb. 18, 1875, ch. 380, 18 Stat. L. 319, by striking out the words "Secretary of the Treasury"

originally appearing therein and inserting in lieu thereof, the words "Comptroller of the Currency" as above given, and by adding the words "and banks under State and territorial laws" as given above.

Sec. 3812. [*Statement of exports and imports.* See STATISTICS.]

Sec. 3813. [*Superseded.*]

This section was as follows:

"SEC. 3813. [*Documents to be delivered at Interior Department.*] The Congressional Printer shall deliver to the Secretary of the Interior, at the room in the Interior Department set apart for that purpose, all books and documents directed by law to be printed for the use of the Government, except such as

are directed to be printed for the particular use of Congress, or of either House thereof, or of the President, or of any of the Departments." Act of Feb. 5, 1859, ch. 22, 11 Stat. L. 379.

See the Act of Jan. 12, 1895, ch. 23, sec. 64. See PUBLIC DOCUMENTS, *ante*, p. 161.

Sec. 3814. [*Annual estimates for register of treasury.* *Superseded.* See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 891.]

Secs. 3815-3818. [*Superseded.*]

These sections were superseded by the Act of Jan. 12, 1895, ch. 23, set out below. They were as follows:

"SEC. 3815. [*Quarterly account.*] The Congressional Printer shall render to the Secretary of the Treasury, quarterly, a full account of all purchases made by him, and of all printing and binding done in the Government Printing-Office for each House of Congress and for each of the executive and judicial departments." Res. of June 23, 1860, No. 25, 12 Stat. L. 118.

See the Act of Jan. 12, 1895, ch. 23, secs. 19, 22. See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, pp. 934, 935.

"SEC. 3816. [*Advances to Public Printer.*] There shall be advanced to the Public Printer, from time to time, as the public service may require it, and under such rules as the Secretary of the Treasury may prescribe, a sum of money not exceeding at any time four-fifths of the penalty of his bond, to enable him to pay for work and material." Res. of June 23, 1860, No. 25, 12 Stat. L. 118.

This section was amended by the Act of May 29, 1894, ch. 85, 28 Stat. L. 84, by sub-

stituting the words "four-fifths" for the words "two-thirds" appearing in the section as originally enacted.

See the Act of Jan. 12, 1895, ch. 23, sec. 28, *infra*, p. 649.

"SEC. 3817. [*Settlement of accounts.*] The Congressional Printer shall settle the account of his receipts and disbursements in the manner required of other disbursing officers." Res. of June 23, 1860, No. 25, 12 Stat. L. 118.

See the Act of Jan. 12, 1895, ch. 23, sec. 30, *infra*, p. 650.

"SEC. 3818. [*Moneys from sales, etc.*] The moneys received from sales of extra copies of documents, and from sales of paper-shavings and imperfections, shall be deposited by the Congressional Printer in the Treasury of the United States, to the credit of the appropriations for public printing, binding, and paper, respectively, as designated by him, and shall be subject to his requisition in the manner prescribed by law." Act of June 23, 1864, ch. 155, 13 Stat. L. 186.

See the Act of Jan. 12, 1895, ch. 23, sec. 29, *infra*, p. 650.

Sec. 3819. [*Foremen's monthly statements.*] The foremen of printing and binding shall make out and deliver to the Congressional Printer monthly statements of the work done in their respective offices, together with monthly payrolls, which shall contain the names of the persons employed, the rate of compensation of and amount due to each, and the service for which it is due. [*R. S.*]

Res. of June 23, 1860, No. 25, 12 Stat. L. 117.

Sec. 3820. [*Superseded.*]

This section was as follows:

"SEC. 3820. [*Report to the Secretary of the Interior.*] The Congressional Printer shall keep a true account of all paper received from contractors, and of all paper used in the Public Printing-Office, and shall, at the end of each fiscal year, report to the Secretary of the Interior the amount of each

class consumed in said office, and the works or publications in which the same was used." Res. of June 23, 1860, No. 25, 12 Stat. L. 119.

See the Act of Jan. 12, 1895, ch. 23, secs. 19, 22, under the title *ESTIMATES, APPROPRIATIONS, AND REPORTS*, vol. 2, pp. 934, 935.

Secs. 3821, 3822. [*Superseded.* See *ESTIMATES, APPROPRIATIONS, AND REPORTS*, vol. 2, pp. 891, 935.]

An act providing for the public printing and binding and the distribution of public documents.

[*Act of Jan. 12, 1895, ch. 23, 28 Stat. L. 601.*]

[*SEC. 1.*] [*Joint committee on printing.*] That there shall be a Joint Committee on Printing, consisting of three members of the Senate and three members of the House of Representatives, who shall have the powers herein-after stated. [*28 Stat. L. 601.*]

By Act of March 2, 1895, ch. 189, when there is no joint committee, the powers and duties devolving upon such committee shall

be exercised by the committee then in existence of either House. See *infra*, p. 661.

SEC. 2. [*Power to remedy neglect or delay in printing — reprinting bills.*] The Joint Committee on Printing shall have power to adopt such measures as may be deemed necessary to remedy any neglect or delay in the execution of the public printing; and the committee shall have power to order reprinted not exceeding three hundred copies of a public bill pending before either House of Congress, when the supply shall have become exhausted, and the interests of the public service demand immediate action. [*28 Stat. L. 601.*]

SEC. 3. [*Standards of paper — advertisements for proposals — samples.*] The Joint Committee on Printing shall fix upon standards of paper for the different descriptions of public printing and binding, and the Public Printer shall, under their direction, advertise in two newspapers, published in each of the cities of Boston, New York, Philadelphia, Baltimore, Washington, Cincinnati, Saint Louis, Louisville, Omaha, Denver, San Francisco, and Chicago, for sealed proposals to furnish the Government with paper, as specified in the schedule to be furnished to applicants by the Public Printer, setting forth in detail the quality and quantities required for the public printing. And the Public Printer shall furnish samples of the standard of papers fixed upon to applicants therefor who shall desire to bid. [*28 Stat. L. 601.*]

SEC. 4. [*Specifications in advertisements for paper.*] The advertisements shall specify the minimum portion of each quality of paper required for either three months, six months, or one year, as the Joint Committee on Printing

may determine; but when the minimum portion so specified exceeds, in any case, one thousand reams, it shall state that proposals will be received for one thousand reams or more. [28 Stat. L. 601.]

SEC. 5. [*Opening bids and awarding contracts for paper — bonds.*] The sealed proposals to furnish paper shall be opened in the presence of the Joint Committee on Printing, and the contracts shall be awarded by them to the lowest and best bidder for the interest of the Government; but they shall not consider any proposal which is not accompanied by a bond approved by a judge or clerk of a court of record in the penalty of five thousand dollars that the bidder or bidders, if his or their proposal is accepted, shall enter into a contract to furnish the articles proposed for and by satisfactory evidence that the person making it is a manufacturer of or dealer in the description of paper which he proposes to furnish. [28 Stat. L. 602.]

SEC. 6. [*Approval of contracts for paper — time of performance — bonds.*] No contract for furnishing paper shall be valid until it has been approved by the Joint Committee on Printing, if made under their direction, or by the Secretary of the Interior, if made under his direction, according to the provisions of section nine of this Act. The award of each contract for furnishing paper shall designate a reasonable time for its performance. The contractor shall give bond in such amount as may be fixed by, and to the approval of, the Joint Committee on Printing. [28 Stat. L. 602.]

SEC. 7. [*Paper to conform to standard.*] The Public Printer shall compare every lot of paper delivered by any contractor with the standard of quality fixed upon by the Joint Committee on Printing, and shall not accept any paper which does not conform to it in every particular. [28 Stat. L. 602.]

SEC. 8. [*Determination of quality of paper.*] In case of difference of opinion between the Public Printer and any contractor for paper respecting its quality, the matter of difference shall be determined by the Joint Committee on Printing or by the Secretary of the Interior when Congress is not in session, and the decision of said Joint Committee or of the Secretary of the Interior shall be final as to the United States. [28 Stat. L. 602.]

SEC. 9. [*Procedure on default of contractor for paper.*] If any contractor shall fail to comply with his contract, the Public Printer shall report such default to the Joint Committee on Printing, when Congress is in session, or to the Secretary of the Interior when Congress is not in session; and he shall, under the direction of the Committee, or of the Secretary of the Interior, as the case may be, enter into a new contract with the lowest, best and most responsible bidder for the interest of the Government among those whose proposals were rejected at the last opening of bids, or he shall advertise for new proposals, under the regulations hereinbefore stated; and during the interval which may thus occur he shall, under the direction of the Joint Committee on Printing, or of the Secretary of the Interior, purchase in open market, at the lowest market price, all paper necessary for the public printing. [28 Stat. L. 602.]

SEC. 10. [*Liability of defaulting contractor — suit on bond.*] In case of the default of any contractor to furnish paper, he and his sureties shall be responsible for any increase of cost to the Government in procuring a supply of such paper which may be consequent upon such default. The Public Printer shall report every such default, with a full statement of all the facts in the

case, to the Solicitor of the Treasury, who shall prosecute the defaulting contractor and his sureties upon their bond, in the circuit court of the United States in the district in which such defaulting contractors reside. [28 Stat. L. 602.]

SEC. 11. [*Open-market purchases of paper.*] The Joint Committee on Printing, or during the recess of Congress the Secretary of the Interior, may authorize the Public Printer to make purchase of paper in open market whenever they may deem the quantity required so small or the want so immediate as not to justify advertisement for proposals. [28 Stat. L. 602.]

SEC. 12. [*Purchase of other material in open market.*] The Joint Committee is authorized to give permission to the Public Printer to purchase material other than paper in open market, whenever in their opinion it would not promote the public interest to advertise for proposals and to make contracts for the same: *Provided, however,* That the purchases authorized by this Act shall not in any term of six months exceed the sum of fifty dollars for any particular article required. [28 Stat. L. 602.]

This section superseded the provisions of Act of Feb. 1, 1878, ch. 10, "An act to further regulate the purchase of material for the public printing and binding," as follows:

"That the Joint Committee on the Public Printing be and hereby is authorized to give permission to the Public Printer to purchase material in open market, whenever in their

opinion, it would not promote the public interest to advertise for proposals and to make contracts for the same: *Provided, however,* That the purchases authorized by this act shall not in any term of six months, exceed the sum of fifty dollars for any particular article required." [20 Stat. L. 22.]

SEC. 13. [*Congressional Record — contents, index, etc.*] The Joint Committee shall have control of the arrangement and style of the Congressional Record, and while providing that it shall be substantially a verbatim report of proceedings, shall take all needed action for the reduction of unnecessary bulk, and shall provide for the publication of an index of the Congressional Record semimonthly during the sessions of Congress and at the close thereof. [28 Stat. L. 603.]

This and the following section 14 supersede the provisions of the Act of March 31, 1884, ch. 18, "An act to limit the cost of indexing the Congressional Record," as follows:

"[SEC. 1.] That the Joint Committee on Printing be, and they are hereby, authorized and directed to make the necessary provisions and arrangements for issuing the index of the Congressional Record semi-monthly during the sessions of Congress; that the Public Printer be, and he is hereby, directed to print and distribute the same number of copies of said semi-monthly index as he prints and distributes of the daily issue of the Record, and to the same persons and in the same manner; that the Public Printer shall employ such person to prepare said index as shall be designated by the Joint Committee on Printing who shall also fix and

regulate the compensation to be paid by the Public Printer for the said work, and direct the form and manner of its publication: *Provided, however,* That the rate of compensation allowed for preparing the said semi-monthly indexes, including also their compilation into a complete session index, shall not exceed, for each page of the printed Congressional Record, the average that it cost per page of the Congressional Record for compiling the session index of the Forty-sixth Congress: *And provided further,* That there may be employed and paid on said work, at times not interfering with their ordinary employment, persons who are also employed and paid in any other office or employment under the Government. [23 Stat. L. 6.]

"SEC. 2. [*Repeals Res. of Feb. 8, 1881, No. 9, 21 Stat. L. 516.*]"

SEC. 14. [*Preparation of indexes to Congressional Record.*] The Joint Committee shall designate to the Public Printer a competent person to prepare the semimonthly and session index to the Congressional Record, and shall fix and regulate the compensation to be paid by the Public Printer for the said work and direct the form and manner of its publication and distribution. [28 Stat. L. 603.]

See note to section 13, *supra*.

SEC. 15. [*Lithographing and engraving — contracts with or without advertising for bids.*] When the probable total cost of the maps or plates accompanying one work or document exceeds twelve hundred dollars, the lithographing or engraving thereof shall be awarded to the lowest and best bidder, after advertisement by the Public Printer, under the direction of the Joint Committee, which may authorize him to make immediate contracts for lithographing or engraving whenever the exigencies of the public service do not justify advertisement for proposals. [28 Stat. L. 603.]

Maps, etc., where made. — "Here is clear evidence that Congress does not intend maps, charts, and illustrations to be made at the

Government Printing Office." (1891) 20 Op. Atty.-Gen. 41.

SEC. 16. [*Schedule of materials — proposals for contracts — contracts — returns.*] The Public Printer shall prepare a schedule of materials required to be purchased, showing the description, quantity, and quality of each article, and shall invite proposals for furnishing the same, either by advertisement or circular, as the Joint Committee on Printing may direct, and shall make contracts for the same with the lowest responsible bidder, making a return of the same to the Joint Committee, showing the number of bidders, the amounts of each bid, and the awards of the contracts. [28 Stat. L. 603.]

This section, together with sections 17 and 45, *infra*, supersedes the following provisions of the Sundry Civil Appropriation Act of July 31, 1876, ch. 246, sec. 1:

"That from and after the passage of this act it shall be the duty of the Public Printer to employ no workmen not thoroughly skilled in their respective branches of industry, as shown by a trial of their skill under his direction; and whenever it becomes necessary for the Public Printer to make purchases of materials not already due under contracts he shall prepare a schedule of the articles required, showing the description, quantity, and quality of each article and shall invite proposals for furnishing the same either by advertisement or circular, as the Joint Committee on Public Printing may direct, and shall make contracts for the same with the lowest responsible bidder, making a return of the same to the Joint Committee on Public Printing, showing the number of bidders, the amounts of each bid and the awards of the contracts. That so much of all laws or parts of laws as provide for the election or appointment of Public Printer be, and the same are hereby, repealed, to take effect from and after the passage of

this act; and the President of the United States shall appoint by and with the advice and consent of the Senate, a suitable person who must be a practical printer and versed in the art of book-binding, to take charge of and manage the Government Printing Office from and after the date aforesaid: he shall be called the 'Public Printer,' and shall be vested with all the powers and subject to all the restrictions pertaining to the officer now known as the Public Printer; he shall give bond in the sum of one hundred thousand dollars for the faithful performance of the duties of his office, said bond to be approved by the Secretary of the Interior." * * *

[19 Stat. L. 105.]

Section 17 also supersedes the following provision of the Act of Aug. 15, 1876, ch. 287, sec. 1, as follows:

"That the term 'Public Printer' as employed in that part of the act making appropriations for sundry civil expenses of the Government for the current fiscal year which repeals all laws providing for the election or appointment of Public Printer shall be construed as embracing that officer whether known as Congressional Printer or Public Printer." [19 Stat. L. 146.]

SEC. 17. [*Public Printer — appointment — qualifications — title — salary — bond.*] The President of the United States shall nominate and, by and with the advice and consent of the Senate, appoint a suitable person, who must be a practical printer and versed in the art of bookbinding, to take charge of and manage the Government Printing Office. The title of said officer shall be Public Printer. He shall receive a salary of four thousand five hundred dollars per annum, and shall give bond in the sum of one hundred thousand dollars for the faithful performance of the duties of his office, said bond to be approved by the Secretary of the Treasury. [28 Stat. L. 603.]

See note to section 16, *supra*, as to provisions superseded by the above section.

Control of joint committee. — Prior to the

Revised Statutes it was held, in *U. S. v. Seaman*. (1854) 2 Hayw. & H. (D. C.) 151, 27 Fed. Cas. No. 16,245a, *affirmed* in (1854) 17

How. (U. S.) 225, that the superintendent as public printer is subjected wholly to the control of the joint committee on printing.

Nature of office.—Prior to the passage of this Act it was held, in *Clapp's Case*, (1871) 7 Ct. Cl. 353, that the congressional printer is an officer of the Senate, but his duties are not confined to the Senate, but extend equally to the House of Representatives and to all departments of the government by law authorized to require printing at the government printing office; his duties being distinct, discharged outside the halls of Congress, paid for by specific appropriation and not out of the contingent fund of Congress, neither he nor his clerks or employees can be classed as officers of the Senate within the meaning of an Act giving employees of the Senate additional pay. (14 Stat. L. 323, sec. 18.)

To whom responsible.—It was held, under the provisions superseded by the above Act, in *U. S. v. Allison*, (1875) 91 U. S. 303, *reversing* (1874) 10 Ct. Cl. 449, that the superintendent of public printing is not under the

control of any one of the executive departments. He seems to have a department of his own, in which in a sense he is supreme, being more responsible to Congress than to any other authority. The secretary of the interior has no control whatever over the employment of men by the superintendent, neither can he fix their wages nor supervise the action of the superintendent in that particular. He does not pay them, and has no control whatever over the funds out of which they are paid. The superintendent is under the direction of the committees of each House of Congress in respect to engraving, and he goes to the secretary of the treasury with his estimates. The joint committee on printing settle all disputes between him and his contractor for the delivery of paper. He reports to Congress in respect to his employees, and to the secretary of the treasury in respect to his receipts and disbursements; from that department, also, he draws his money upon proper requisitions.

SEC. 18. [*Duties of Public Printer.*] It shall be the duty of the Public Printer to purchase all materials and machinery which may be necessary for the Government Printing Office; to take charge of all matter which is to be printed, engraved, lithographed, or bound; to keep an account thereof in the order in which it is received, and to cause the work to be promptly executed; to superintend all printing and binding done at the Government Printing Office, and to see that the sheets or volumes are promptly delivered to the officer who is authorized to receive them. The receipt of such officer shall be a sufficient voucher for their delivery. [28 Stat. L. 603.]

What purchases included.—The purchases by the public printer contemplated by this Act are paper and materials for printing and binding public documents and such as do not come within R. S. sec. 3709, inhibiting pur-

chases and contracts for supplies by departments of the government except after due advertisement for proposals. (1895) 21 Op. Atty.-Gen. 137.

SEC. 19. [*Public Printer to report number of copies, etc., printed and bound.*] See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 935.]

SEC. 20. [*Boards of examiners — board of condemnation.*] The chief clerk, the foreman of printing, and a person designated by the Joint Committee on Printing, shall constitute a board to examine and report in writing on all paper delivered under contract, or by purchase or otherwise, at the Government Printing Office. The chief clerk, foreman of binding, and a person designated by the Joint Committee on Printing shall constitute a board to examine and report in writing on all material, except paper, for the use of the bindery. The chief clerk, the foreman of printing, and a person designated by the Joint Committee on Printing shall constitute a board of condemnation, who, upon the call of the Public Printer, shall determine the condition of presses and other machinery and material used in the Government Printing Office, with a view to condemnation. [28 Stat. L. 603.]

SEC. 21. [*Condemned material to be sold or exchanged.*] Whenever any machinery or material in the Government Printing Office shall have been regularly condemned as unserviceable, the Public Printer may sell the same, after public advertisement, to the highest bidder, for cash, and turn the proceeds into the Treasury of the United States: *Provided*, That in case the sum

or sums offered for such advertised property should be deemed by him too low, he may exchange said old machinery or material for new, paying the difference in money, and render appropriate vouchers for such expenditure. [28 Stat. L. 604.]

SEC. 22. [*Public Printer to report to Congress. See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 934.*]

SEC. 23. [*Leaves of absence to employees in Government Printing Office.*] [*Superseded.*]

This section was as follows:

"SEC. 23. The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year. Such employees as are engaged on piecework shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, pro rata for the time of such employment: *And provided further*, That it shall be lawful to allow pro rata leave to those serving fractional parts of the year." [28 Stat. L. 604.]

It was superseded by the provisions of Act of June 11, 1896, ch. 420, sec. 1, *infra*, p. 661.

Prior provisions superseded were as follows:

Act of June 30, 1886, ch. 572, "An act granting leave of absence to employees in the Government Printing Office."

"[SEC. 1.] That the employees of the Government Printing Office, whether employed by the piece or otherwise, be allowed a leave of absence, with pay, not exceeding fifteen days in any one fiscal year, after the service of one year and under such regulations and at such time as the Public Printer may designate. Such employees as are engaged on piece-work shall receive the same

rate of pay for the said fifteen days' leave as will be paid the day-hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, pro rata for the time of such employment. [24 Stat. L. 91.]

"SEC. 2. That this act shall take effect on and after the first day of July, eighteen hundred and eighty-six." [24 Stat. L. 91.]

Act of Aug. 1, 1888, ch. 722, "An act to extend the leave of absence of employees in the Government Printing Office to thirty days per annum."

"That the act entitled 'An act granting leave of absence to employees in the Government Printing Office,' approved June thirtieth, eighteen hundred and eighty-six, be so amended as to extend the annual leave of absence therein described to thirty days in each fiscal year: *Provided*, That it shall be lawful to allow pro rata leave to those serving fractional parts of a year." [25 Stat. L. 352.]

Act of June 19, 1894, ch. 108.

"* * * Hereafter the Public Printer is authorized to pay pro rata leave of absence out of any appropriation for leaves of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year." * * * [28 Stat. L. 94.]

This provision was repeated in the Deficiencies Appropriation Act of March 2, 1895, ch. 187, sec. 1, 28 Stat. L. 868.

SEC. 24. [*Congressional Record to be furnished to members of Congress and to committees. See PUBLIC DOCUMENTS, ante, p. 156.*]

SEC. 25. [*Stereotyping or electrotyping.*] The Public Printer shall cause to be stereotyped or electrotyped all matter when there is a reason to believe that it will be needed a second time. [28 Stat. L. 604.]

SEC. 26. [*Public Printer's estimates for paper. See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 891.*]

SEC. 27. [*Public Printer's estimates for expenses. See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 891.*]

SEC. 28. [*Advances to Public Printer.*] [*Superseded.*]

This section was as follows:

"SEC. 28. There shall be advanced to the Public Printer, from time to time, as the public service may require it, and under such rules as the Secretary of the Treasury may prescribe, a sum of money, not exceeding, at

any time, four-fifths of the penalty of his bond, to enable him to pay for work and material." [28 Stat. L. 604.]

It was superseded by Act of March 30, 1900, ch. 118, *infra*, p. 663.

SEC. 29. [*Receipts from sales of documents, waste material, etc., deposited in Treasury — report.*] Moneys received from sales of extra copies of documents, paper shavings, imperfections, waste gold leaf, leather and book-cloth scraps, and for the sale of old and condemned material, shall be deposited by the Public Printer in the Treasury of the United States, and a detailed statement thereof shall be included in his annual report to Congress. [28 Stat. L. 605.]

SEC. 30. [*Settlement of accounts.*] The Public Printer shall settle the account of his receipts and disbursements in the same manner required of other disbursing officers. [28 Stat. L. 605.]

SEC. 31. [*Consolidation of printing offices under control of Public Printer — exceptions — requisitions for work — reports.*] All printing offices in the Departments now in operation, or hereafter put in operation, by law, shall be considered a part of the Government Printing Office, and shall be under the control of the Public Printer, who shall furnish all presses, types, imposing stones, and necessary machinery and material for said offices from the general supplies of the Government Printing Office; and all paper and material of every kind used in the said offices for departmental work, except letter and note paper and envelopes, shall be supplied by the Public Printer; and all persons employed in said printing offices and binderies shall be appointed by the Public Printer, and be carried on his pay roll the same as employees in the main office, and shall be responsible to him: *Provided*, That the terms of this Act shall not apply to the office in the Weather Bureau, or, to so much of the printing as is necessary to expedite the work of the Record and Pension Division of the War Department nor to the printing office now in operation in the Census Office; but the Public Printer, with the approval of the Joint Committee on Printing, may abolish any of these excepted offices whenever in their judgment the economy of the public service would be thereby advanced. All work done in the said offices shall be ordered on blanks prepared for that purpose by the Public Printer, which shall be numbered consecutively, and must be signed by some one designated by the head of the Department for which the work is to be done, who shall be held responsible for all work thus ordered, and who shall quarterly report to the head of the Department a classified statement of the work done and the cost thereof, which report shall be transmitted to the Public Printer in time for his annual report to Congress. The Public Printer shall show in detail, in his annual report, the cost of operating each departmental office. [28 Stat. L. 605.]

This section supersedes the following provisions:

Act of July 31, 1886, ch. 827.

* * * "That hereafter no printing shall be done in the Surgeon-General's Office, and all printing for said office shall be done by the Public Printer, and charged to the appropriations made by law applicable to such service." * * * [24 Stat. L. 194.]

Act of March 30, 1888, ch. 47.

* * * "That the printing press and material formerly in use in the office of the Surgeon-General may be used by the record

and pension division of that office to expedite as much as possible the work of the division, and for no other purpose." * * * [25 Stat. L. 52.]

Act of July 11, 1890, ch. 667.

[SEC. 1.] * * * "That so much of the printing for the office of the Surgeon-General of the Army as is required to meet emergencies or to expedite the work of that office may, when practicable, be done in the office of the Adjutant-General or of the Chief of Ordnance, as the Secretary of War may direct." * * * [26 Stat. L. 252.]

SEC. 32. [*Accountability for materials — requisitions — receipts.*] The Public Printer shall charge himself with, and be accountable for, all material received for the public use. The foreman of printing and binding shall make out estimates of the quantity and kind of material required for their respective departments, and file written requisitions therefor when it is needed. The Public Printer shall furnish the same to them on these requisitions, as required for the public service, and they shall receipt to him and be held accountable for all material so received. [28 Stat. L. 605.]

SEC. 33. [*Fraud by Public Printer — penalty.*] If the Public Printer shall, by himself or through others, corruptly collude or have any secret understanding with any person to defraud the United States, or whereby the United States shall be made to sustain a loss, he shall, on conviction thereof before any court of competent jurisdiction forfeit his office and be imprisoned in the penitentiary for a term of not more than seven years, and fined in a sum not exceeding three thousand dollars. [28 Stat. L. 605.]

SEC. 34. [*Private interests by Public Printer, etc., prohibited — penalty.*] Neither the Public Printer, chief clerk, foreman of printing, foreman of binding, nor any of their assistants shall, during their continuance in office, have any interest, direct or indirect, in the publication of any newspaper or periodical, or in any printing, binding, engraving, or lithographing of any kind, or in any contract for furnishing paper or other material connected with the public printing, binding, lithographing, or engraving; and for every violation of this section the party offending shall, on conviction before any court of competent jurisdiction, be imprisoned in the penitentiary for a term of not less than one nor more than five years, and shall be fined not exceeding five hundred dollars. [28 Stat. L. 605.]

SEC. 35. [*Temporary storage — leases.*] The Public Printer is hereby authorized, under great urgency, while in occupancy of the present Government Printing Office, to procure suitable storage room, as near said building as practicable, for the temporary storage of the property of the Government, with a view to relieving the said office from undue strain: *Provided*, That no contract for nor lease of buildings or accommodations for this purpose shall be made or entered into for a longer period than one year, and that every such contract or lease shall be first submitted to the Joint Committee on Printing for their approval and be approved by them. [28 Stat. L. 606.]

The erection of a new building for the government printing office is provided for by Act of March 2, 1895, ch. 189, 28 Stat. L. 962.

SEC. 36. [*Vacancy in office of Public Printer — temporary appointment.*] In case of the death, resignation, absence, or sickness of the Public Printer the chief clerk of the Government Printing Office shall perform the duties of the Public Printer until a successor is appointed or such absence or sickness shall cease; but the President may, in his discretion, authorize and direct any other officer of the Government, whose appointment is vested in the President by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the Public Printer shall cease: *Provided*, That a vacancy occasioned by death or resignation must not be temporarily filled under the provisions of this section for a longer period than ten days, and no temporary appointment, designation, or assignment of another officer to perform such duty shall be made except to fill a vacancy happening during a recess of the Senate. [28 Stat. L. 606.]

SEC. 37. [*Printing for members of Congress — extracts from Congressional Record — documents — mailing envelopes and franks.*] It shall be lawful for the Public Printer to print and deliver, upon the order of any Senator, Representative, or Delegate, extracts from the Congressional Record, the person ordering the same paying the cost thereof; and documents and reports of committees, with the evidence and papers submitted therewith, or any part thereof ordered printed by Congress, may be reprinted by the Public Printer on order of any member of Congress or Delegate, on prepayment of cost thereof. The Public Printer may furnish without cost to Senators, Members, and Delegates, envelopes, ready for mailing the Congressional Record or any part thereof, or speeches, or reports therein contained. Envelopes so furnished shall contain in the upper left-hand corner thereof the following words, to wit: "Senate United States (or House of Representatives, U. S.). Part of Congressional Record. Free," and in upper right-hand corner the letters "U. S. S." or "M. C." But he shall not print any other words thereon, except at the personal expense of the Senator, Member, or Delegate ordering the same, except to affix the official title of a document.

He may also furnish without cost to Senators, Members, and Delegates blank franks for public documents. Franks so furnished shall contain in the upper left-hand corner thereof the following words, to wit: "Public document. Free. United States Senate (or House of Representatives U. S. S. S.)" and in upper right-hand corner the letters "U. S. S." or "M. C." But he shall not print any other words thereon except where it may be desirable to affix the official title of a document. All other words printed thereon shall be at the personal expense of the Senator, Member, or Delegate ordering the same.

At the request of any Congressman the Public Printer is authorized to print upon franks or envelopes used for mailing public documents or seed the facsimile stamp of said Congressman and a special request for return if not called for, and the name of the State and county and city. Said Congressman to deposit with his order the extra expense involved in printing these additional words.

All moneys accruing under this section shall be deposited by the Public Printer in the Treasury of the United States and accounted for in his annual report to Congress. [28 Stat. L. 606.]

This section is modified by the Act of March 2, 1895, ch. 189, sec. 1, *infra*, p. 663.

This section superseded provisions as follows:

Act of March 3, 1875, ch. 129.

"[SEC. 1.] * * * It shall be lawful for the Congressional Printer to print and deliver, upon the order of any Senator or Member of the House of Representatives, or Delegate, extracts from the Congressional Record, the person ordering the same paying the cost thereof." * * * [18 Stat. L. 347.]

Res. of April 15, 1886, No. 11, "Joint resolution authorizing the printing of Committee reports."

"That the reports of committees, the evidence and papers submitted therewith, or any part thereof, printed by order of Congress, may be reprinted at the Public Printing Office, at the instance of Senators, Representatives, and Delegates in Congress, upon payment in advance to the Public Printer of the cost thereof with ten per centum added, the same as if originally printed in the Congressional Record." [24 Stat. L. 341.]

SEC. 38. [*Purchase of press supplies, without advertising.*] The Public Printer may purchase in open market, and without previous advertising, such supplies as the Government Printing Office may require, of ink, rollers, composition for making rollers, tapes, press blankets, and lubricating oils, taking care that only the lowest market prices be paid; and when practicable he shall issue circulars inviting bids. [28 Stat. L. 607.]

This section supersedes Act of Dec. 21, 1882, ch. 5, "An act to authorize the Public Printer to make certain purchases without previous advertisement," as follows:

"That it is lawful for the Public Printer to purchase in the open market, and without previous advertisement, such supplies as the Government Printing office may require, of

ink, rollers, composition for making rollers, types, press-blankets, and lubricating oils; taking care that only the lowest market prices be paid for the quality of the articles purchased; and when practicable, issue circulars for bids from persons capable of supplying them." [22 Stat. L. 597.]

SEC. 39. [*Wages — extra pay for night work.*] The Public Printer shall pay no greater price for composition than fifty cents per thousand ems, to pressmen fifty cents per hour, and forty cents per hour for time work to printers and bookbinders: *Provided*, That the pay of all employees of the Government Printing Office engaged on night work (between the hours of five o'clock post-meridian and eight o'clock antemeridian) shall be twenty per centum in addition to the amount paid for day labor. [28 Stat. L. 607.]

The first part of this section is a re-enactment of a provision in the Deficiency Appropriation Act of Feb. 16, 1877, ch. 58, 19 Stat. L. 231. The proviso is a re-enactment of the Act of March 3, 1891, ch. 550, "An act to revise the wages of certain employees in the Government Printing Office." The above section also superseded the provisions of the Act of Jan. 13, 1883, ch. 23, 22 Stat. L. 402, "An Act to provide for extra work in the Government Printing Office in cases of emergency," as follows:

"That for extra work, ordered in emergencies, and performed on Sundays or legal holidays, or between the hours of midnight and eight ante meridian, excepting that done by regular organized night forces, the Public Printer is hereby authorized to pay such extra prices as the customs of the trade and the justice of the case may require." [22 Stat. L. 402.]

Modified. — The section in the text was modified by Act of June 6, 1900, ch. 791, sec. 1, *infra*, p. 663.

Who entitled to extra pay for night work. — An assistant foreman of the pressroom in the government printing office on duty at night is an "employee engaged on night work" within the intent of this Act and entitled to "twenty per cent. in addition to the amount paid for day labor." *Louis v. U. S.*, (1901) 37 Ct. Cl. 81.

How computed. — The additional twenty per cent. given by this section for the performance of night labor is to be computed on the amount of the employee's salary while serving in the daytime, and is not to be computed on the salary of the officer performing similar work in the daytime. *Louis v. U. S.*, (1901) 37 Ct. Cl. 81.

SEC. 40. [*Congressional Directory and Record — printing for sale — proceeds of sale.* See PUBLIC DOCUMENTS, *ante*, p. 156.]

SEC. 41. [*Engravings and lithographs — performance of contract — certificate.*] The Public Printer shall preserve in his office samples of the paper on which any engravings or lithographs are to be furnished by contract, and he shall not receive any engraving or lithograph which is not printed on paper equal to the sample, or which is not executed in the proper manner or in the quantity contracted for, or within the time specified in the contract, unless, for special reasons, he may have extended the time. The contractor shall not be paid except upon the certificate of the Public Printer that his contract has been complied with. [28 Stat. L. 607.]

SEC. 42. [*Extra copies of documents.* See PUBLIC DOCUMENTS, *ante*, p. 156.]

SEC. 43. [*List of employees for Biennial Register and statistics.*] The Public Printer shall, on the first day of July in each year in which a new Congress is to assemble, cause to be filed in the Department of the Interior a full and complete list of all officers, agents, clerks, and employees employed in his department, or in any of the branch offices. He shall include in such list all the statistics peculiar to his department required to enable the Secretary of the Interior to prepare the Biennial Register. [28 Stat. L. 607.]

SEC. 44. [*Chief clerk — foremen of printing and binding.*] There shall be appointed by the Public Printer a chief clerk, who shall be a practical printer and versed in the art of bookbinding, whose salary shall be two thousand four hundred dollars per annum; and a foreman of printing and a foreman of binding, who must be practically and thoroughly acquainted with their respective trades, who shall each receive a salary of two thousand one hundred dollars per annum. [28 Stat. L. 607.]

SEC. 45. [*Skilled workmen to be employed.*] It shall be the duty of the Public Printer to employ workmen who are thoroughly skilled in their respective branches of industry, as shown by trial of their skill under his direction. [28 Stat. L. 607.]

See note to section 16, *supra*, as to provisions superseded.

SEC. 46. [*Holidays for employees.* See HOLIDAYS, vol. 3, p. 229.]

SEC. 47. [*Night work.*] The Public Printer shall cause work to be done on the public printing in the Government Printing Office at night as well as through the day, when the exigencies of the public service require it, but the provisions of the existing eight-hour law shall apply. [28 Stat. L. 607.]

By Act of March 30, 1888, ch. 47, *infra*, p. 663, the public printer is "directed to rigidly enforce the provisions of the eight-hour law in the department under his charge." See further provisions under title LABOR, vol. 4, pp. 778-780.

SEC. 48. [*Clerks.*] The Public Printer may employ two clerks of class four, at an annual salary of one thousand eight hundred dollars each; two clerks of class three, at one thousand six hundred dollars each per annum; one clerk of class two, at one thousand four hundred dollars per annum. [28 Stat. L. 608.]

This section superseded the provisions of Act of June 20, 1878, ch. 359, as follows: "And the public printer is hereby authorized to employ three additional clerks of the third class, to make the estimates." [20 Stat. L. 207.]

SEC. 49. [*Proof-readers, laborers, and other hands.*] The Public Printer may employ, at such rates of wages as he may deem for the interest of the Government and just to the persons employed, such proof-readers, laborers, and other hands as may be necessary for the execution of the orders for public printing and binding authorized by law; but he shall not, at any time, employ in the office more hands than the absolute necessities of the public work may require. [28 Stat. L. 608.]

SEC. 50. [*Apprentices.*] The Public Printer may employ such number of apprentices, not to exceed twenty-five at any one time, as in his judgment will be consistent with the economical service of the office. [28 Stat. L. 608.]

SEC. 51. [*Form and style of work for Departments.*] The forms and style in which the printing or binding ordered by any of the Departments shall be executed, and the material and the size of type to be used, shall be determined by the Public Printer, having proper regard to economy, workmanship, and the purposes for which the work is needed. [28 Stat. L. 608.]

SEC. 52. [*Sale of duplicate plates — no copyright on Government publications.*] The Public Printer shall sell, under such regulations as the Joint Committee on Printing may prescribe, to any person or persons who may apply additional or duplicate stereotype or electrotype plates from which any

Government publication is printed, at a price not to exceed the cost of composition, the metal and making to the Government and ten per centum added: *Provided*, That the full amount of the price shall be paid when the order is filed: *And provided further*, That no publication reprinted from such stereotype or electrotpe plates and no other Government publication shall be copyrighted. [28 Stat. L. 608.]

SEC. 53. [*Duplication to be avoided.*] The Public Printer shall examine closely the orders of the Senate and House for printing, and in case of duplication he shall print under the first order received. [28 Stat. L. 608.]

SEC. 54. [*Documents and reports — "usual number" — style and distribution — reserved sets.* See PUBLIC DOCUMENTS, *ante*, p. 157.]

SEC. 55. [*Bills and resolutions — number and distribution — private bills defined.* See PUBLIC DOCUMENTS, *ante*, p. 158.]

SEC. 56. [*Laws, postal conventions, and treaties — number and distribution.* See PUBLIC DOCUMENTS, *ante*, p. 158.]

SEC. 57. [*Journals of Congress — number and distribution.* See PUBLIC DOCUMENTS, *ante*, p. 158.]

SEC. 58. [*Departmental, etc., publications — distribution.* See PUBLIC DOCUMENTS, *ante*, p. 159.]

SEC. 59. [*Resolutions for printing extra copies.* See PUBLIC DOCUMENTS, *ante*, p. 159.]

SEC. 60. [*Document rooms, Senate and House — superintendent, etc., how appointed.* See CONGRESS, vol. 2, p. 229.]

SEC. 61. [*Superintendent of documents — sale of documents — accounts and reports — custody of documents.* See PUBLIC DOCUMENTS, *ante*, p. 159.]

SEC. 62. [*Index of documents, how made, number and distribution.* See PUBLIC DOCUMENTS, *ante*, p. 160.]

SEC. 63. [*Disposal of documents on hand at the Capitol.* See PUBLIC DOCUMENTS, *ante*, p. 160.]

SEC. 64. [*Office of superintendent of documents in Interior Department abolished — eleventh census distribution.* See PUBLIC DOCUMENTS, *ante*, p. 161.]

SEC. 65. [*Free mail and franking privileges of Superintendent of Documents.* See POSTAL SERVICE, vol. 5, p. 864.]

SEC. 66. [*Assistants, printing, office, storage, etc., for Superintendent of Documents.* See PUBLIC DOCUMENTS, *ante*, p. 161.]

SEC. 67. [*Delivery to Superintendent of Documents, of documents in departments, etc.* See PUBLIC DOCUMENTS, *ante*, p. 161.]

SEC. 68. [*Distribution of Congressional documents.* See PUBLIC DOCUMENTS, *ante*, p. 161.]

SEC. 69. [*Catalogue of publications — contents and number.* See PUBLIC DOCUMENTS, *ante*, p. 162.]

SEC. 70. [*Investigation of libraries as depositories.* See PUBLIC DOCUMENTS, *ante*, p. 162.]

SEC. 71. [*Folding rooms, Senate and House — superintendent — distribution.* See CONGRESS, vol. 2, p. 230.]

SEC. 72. [*Documents not drawn by retiring members of Congress.* See PUBLIC DOCUMENTS, *ante*, p. 162.]

SEC. 73. [*Extra copies of documents — binding — number and allotment.* See PUBLIC DOCUMENTS, *ante*, p. 162; STATUTES.]

This section treats of the contents, printing, binding, number, distribution, etc., of Documents, as follows:

Report of Secretary of Agriculture.
Report of Bureau of Animal Industry.
Report of Chief of Weather Bureau.
Ephemeris and Nautical Almanac.
Observations of Naval Observatory.
Report of Superintendent of Coast and Geodetic Survey.
Commercial Relations and Foreign Relations.
Report of Bureau of Ethnology.
Report of Commissioner of Fish and Fisheries.
Bulletins of Fish Commission.
Report of Health Officer of District of Columbia.
Report of Civil Service Commission.
Report of Commissioner of Education.
Report of Geological Survey.
Report of Commissioner of Labor.
Report of Interstate Commerce Commission.
Revised Statutes and Supplements.
Pamphlet copies of Statutes.
Statutes at Large.
Force of printed statutes as evidence — contents.
President's Message.
President's Message and accompanying documents, and reports of departments.
Certain departmental reports not to be printed.
Report of National Academy of Sciences.
Memoirs of National Academy of Sciences.

Report of American Historical Association.
Army and Navy Registers.
Report of Smithsonian Institution.
Reports of consular officers.
Statistical Abstract.
Iron and steel tests.
Treasury Department Reports.
Report of Government Directors of Union Pacific Railways.
Eulogies — engraving.
Manuals, Senate and House.
Congressional Directory — official correspondence free.
Abridgment of President's Messages and accompanying documents — preparation.
Congressional Record — gratuitous distribution and subscriptions.
Official Records of the Rebellion.
Report of Public Printer — right of printer to documents.
Official Register — preparation, contents, and distribution.
Patent Office printing.
Patents issued.
Trade marks and labels.
Official Gazette.
Report of Commissioner of Patents.
Specifications and drawings of patents.
Rules of practice — copies of laws — circulars.
Decisions.
Indexes.
Lithographing, etc., contracts.
Inserting "compliments" forbidden.
The section is set out in PUBLIC DOCUMENTS, *ante*, p. 162.

SEC. 74. [*Publications furnished officers and libraries — property in and use of.* See PUBLIC DOCUMENTS, *ante*, p. 173.]

SEC. 75. [*Documents and reports to foreign legations.* See PUBLIC DOCUMENTS, *ante*, p. 173.]

SEC. 76. [*Coast and Geodetic Survey charts — distribution and sale.* See PUBLIC DOCUMENTS, *ante*, p. 173.]

SEC. 77. [*Hydrographic office charts, nautical books, etc. — publication and sale.* See SHIPPING AND NAVIGATION.]

SEC. 78. [*Foreign hydrographic charts — appropriation for publication.* See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 903, note under R. S. sec. 3686.]

SEC. 79. [*Geological Survey monographs and bulletins — publication and distribution.* See PUBLIC DOCUMENTS, *ante*, p. 174.]

SEC. 80. [*Illustrations and maps in documents or reports — copy to be furnished within one year.*] No document or report to be illustrated or accompanied by maps shall be printed by the Public Printer until the illustrations or maps designed therefor shall be ready for publication; and no order for public printing shall be acted upon by the Public Printer after the expiration of one year, unless the entire copy and illustrations for the work shall have been furnished within that period: *Provided*, This section shall not apply to orders heretofore made for the printing of a series of volumes on one subject. [28 Stat. L. 621.]

SEC. 81. [*Binding and classification of documents.*] Every public document of sufficient size on any one subject shall be bound separately, and receive the title suggested by the subject of the volume, which shall be the chief title, and the classification of the volume shall be placed on the back at the bottom, as simply indicating its classification and not as a part of the title. The executive and miscellaneous documents and the reports of each House of Congress shall be designated as "House Documents," "Senate Documents," "House Reports," "Senate Reports," thus making two classes for each House, and each volume shall receive the title suggested by its subject matter clearly placed upon its back. [28 Stat. L. 621.]

SEC. 82. [*Bound sets of bills and resolutions for Congress.*] The Public Printer shall bind four sets of Senate and House of Representatives bills, joint and concurrent resolutions of each Congress, two for the Senate and two for the House, to be furnished him from the files of the Senate and House document room, the volumes when bound to be kept there for reference. [28 Stat. L. 622.]

SEC. 83. [*Committee reports — Secretary of Senate and Clerk of House to procure and file.* See CONGRESS, vol. 2, p. 230.]

SEC. 84. [*Binding registered bonds and written records.*] Registered bonds and written records may be bound at the Treasury Department. [28 Stat. L. 622.]

SEC. 85. [*Franking documents and free mailing.* See POSTAL SERVICE, vol. 5, p. 864.]

SEC. 86. [*Work must be authorized—style of binding.*] No printing or binding shall be done at the Government Printing Office unless authorized by law. Binding for the Departments of the Government shall be done in plain sheep or cloth, except that record and account books may be bound in Russia leather, sheep fleshers, and skivers, when authorized by the head of a Department: *Provided*, The libraries of the several Departments, the Library of Congress, the libraries of the Surgeon-General's Office, the Patent Office, and the Naval Observatory may have books for the exclusive use of said libraries bound in half Turkey, or material no more expensive. [28 Stat. L. 622.]

This section superseded the provisions of Act of June 20, 1878, ch. 359, as amended by Act of Jan. 27, 1879, ch. 27, and Act of Feb. 26, 1879, ch. 106, as follows:

"Hereafter no binding shall be done for any department of the government except in plain sheep or cloth, and no books shall be printed and bound except when the same shall be ordered by Congress or are authorized by law, except record and account books which may be bound in Russia leather

sheep fleshers and skivers, when authorized by the head of a department, and this restriction shall not apply to the Congressional Library, nor to the Library of the Patent Office, nor to the Library of the Department of State, nor to the Library of the Surgeon-General's Office." [20 Stat. L. 207, 267, 323.]

In (1878) 16 Op. Atty-Gen. 57, it was held prior to this Act that the provision in the Sundry Civil Act of June 20, 1878, ch.

359, that "no books shall be printed and bound except when the same shall be ordered by Congress or are authorized by law," operated to prohibit the practice which theretofore existed (under implied authority of

law) of printing and binding reports, etc., made in the course of departmental business, and required that thenceforth for such printing and binding there must be express statutory authorization.

SEC. 87. [*What work to be done at printing office.*] All printing, binding, and blank books for the Senate or House of Representatives and for the Executive and Judicial Departments shall be done at the Government Printing Office, except in cases otherwise provided by law. [28 Stat. L. 622.]

Binding for Senate Library.—See Act of March 2, 1895, ch 189, sec. 1, *infra*, p. 664.

Printing for Supreme Court.—See Act of June 4, 1897, ch. 2, sec. 1, *infra*, p. 664.

Illustrations, maps, etc.—The printing referred to in this section does not include illustrations and engravings, maps, or charts. (1891) 20 Op. Atty-Gen. 41.

SEC. 88. [*Printing and binding and documents for President.*] The Public Printer shall execute such printing and binding for the President as he shall order and make requisitions for, and deliver to the Executive Mansion two copies each of all documents, bills, and resolutions as soon as printed and ready for distribution. [28 Stat. L. 622.]

SEC. 89. [*No printing in excess of appropriations or without requisition—number limited—direction as to printing.*] No printing shall be done for the Executive Departments in any fiscal year in excess of the amount of the appropriation, and none shall be done without a special requisition, signed by the chief of the Department and filed with the Public Printer. No report, publication, or document shall be printed in excess of the number of one thousand of each in any one fiscal year without authorization therefor by Congress, except that of the annual report of the head of the Department without appendices there may be printed in any one fiscal year not to exceed five thousand copies, bound in pamphlet form; and of the reports of chiefs of bureaus without appendices there may be printed in any one fiscal year not to exceed two thousand five hundred copies, bound in pamphlet form: *Provided*, The Secretary of Agriculture may print such number of copies of the monthly crop report, and of other reports and bulletins containing not to exceed one hundred octavo pages, as he shall deem requisite; and this provision shall apply to the maps, charts, bulletins, and minor reports of the Weather Bureau, which shall be printed in such numbers as the Secretary of Agriculture may deem for the best interests of the Government: *Provided further*, That the Secretary of the Treasury may authorize the printing of the notices to mariners, tide tables' coast pilots, bulletins, and other special publications of the Coast and Geodetic Survey and of the Light-House Board, and the Secretary of the Navy may authorize the printing of the charts, maps, notices to mariners, tide tables, light lists, sailing directions, bulletins, and other special publications of the Hydrographic Office in such editions as the interests of the Government and of the public may require.

Heads of Executive Departments shall direct whether reports made to them by bureau chiefs and chiefs of divisions shall be printed or not. [28 Stat. L. 622.]

This section and sec. 94, *infra*, supersede the provisions of the following Acts:

Act of June 23, 1874, ch. 455.

[SEC. 1.] * * * "That hereafter the Congressional Printer shall print, upon the order of the heads of the Executive Departments, respectively, only such limited number of the annual reports of such Departments and necessary accompanying reports of subordinates as may be deemed necessary for the

use of Congress: *Provided, however*, That no expensive maps or illustrations shall be printed without the special order of Congress." * * * [18 Stat. L. 204.]

Act of July 7, 1884, ch. 332.

[SEC. 1.] * * * "That it shall not be lawful for the head of any Executive Department or of any Bureau, branch, or office of the Government, to cause to be printed, nor shall the Public Printer print, any document

or matter of any character whatever except that which is authorized by law and necessary to administer the public business, nor shall any Bureau officer embrace in his annual or other report to be printed any matter not directly pertaining to the duties of his office as prescribed by law," * * * [23 Stat. L. 227.]

Act of Aug. 5, 1892, ch. 380.

[SEC. 1.] * * * "No printing and binding shall be done by the Public Printer for the several Executive and Judicial Departments of the Government in any fiscal year in excess of the amount of the allotment for such Departments, and none shall be done

without a special requisition, signed by the chief of the Department and filed with the Public Printer; but this restriction shall not be so construed as to prevent the Public Printer from executing printing and binding authorized by special appropriation for any of said Departments. Heads of executive departments shall direct whether reports made to them by bureau chiefs and chiefs of divisions shall be printed or not." * * * [27 Stat. L. 383.]

Publications of office of naval intelligence. — See Res. of March 21, 1900, No. 14, given under PUBLIC DOCUMENTS, *ante*, p. 186.

SEC. 90. [*Departments to order documents required — limit — bills and resolutions.*] The heads of Executive Departments, and such executive officers as are not connected with the Departments, respectively, shall cause daily examination of the Congressional Record for the purpose of noting documents, reports, and other publications of interest to their Departments, and shall cause an immediate order to be sent to the Public Printer for the number of copies of such publications required for official use, not to exceed, however, the number of bureaus in the Department and divisions in the office of the head thereof. The Public Printer shall send to each Executive Department and to each executive office not connected with the Departments, as soon as printed, five copies of all bills and resolutions, except the State Department, to which shall be sent ten copies of bills and resolutions. When the head of a Department desires a greater number of any class of bills or resolutions for official use, they shall be furnished by the Public Printer on requisition promptly made. [28 Stat. L. 623.]

Requisition for greater number. — The head of a department has no right under this section to make a requisition upon the public printer for a greater number of copies of publications other than "bills and resolutions" than the number of bureaus in the department and divisions in the office of the head thereof. If he makes the requisition under the general authority vested in his department and with the understanding that the cost is to be charged against the printing appropriation for his department, he has the

right to make such requisition, and the public printer has no authority to pass upon the character of publications which he may deem essential for carrying out the work of his department. (1896) 21 Op. Atty.-Gen. 370.

Copies of Congressional documents ordered from the public printer under this section by the secretary of state, to a number not exceeding the number of bureaus in his department, should not be charged to the allotment of the public printer's appropriation for such department. (1896) 21 Op. Atty.-Gen. 423.

SEC. 91. [*Form, etc., of reports of executive officers.*] The annual reports of executive officers shall be printed in the same type and form as the report of the head of the Department which it accompanies, unless otherwise ordered by the Joint Committee on Printing. [28 Stat. L. 623.]

SEC. 92. [*Departmental distribution of publications.* See PUBLIC DOCUMENTS, *ante*, p. 174.]

SEC. 93. [*Work for departments — estimate of cost — requisitions.*] When any Department, the Supreme Court, the Court of Claims, or the Library of Congress shall require printing or binding to be done, it shall be on certificate that such work be necessary for the public service; whereupon the Public Printer shall furnish an estimate of the cost by the principal items for such printing or binding so called for, after which requisitions shall be made upon him therefor by the head of such Department, the Clerk of the Supreme Court, Chief Justice of the Court of Claims, or the Librarian of Congress; and the

Public Printer shall place the cost thereof to the debit of such Department in its annual appropriation for printing and binding. [28 Stat. L. 623.]

This section superseded the provisions of Act of June 20, 1878, ch. 359, as follows:

"And when any department shall require printing to be done the Public Printer shall furnish to such department an estimate of the cost by the principal items for said printing so called for; and he shall place to the

debit of such department the cost of the same, on certification of the head of the department, Supreme Court, Court of Claims, or Library of Congress, that said printing is necessary." [20 Stat. L. 207.]

Printing for Supreme Court.—See Act of June 4, 1897, ch. 2, sec. 1, *infra*, p. 664.

SEC. 94. [*Restriction of printing.*] No head of any Executive Department, or of any bureau, branch, or office of the Government, shall cause to be printed, nor shall the Public Printer print, any document or matter except that which is authorized by law and necessary to the public business; and executive officers, before transmitting their annual reports, shall carefully examine the same and all accompanying documents, and exclude therefrom all matter, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports are necessary and relate entirely to the transaction of the public business. [28 Stat. L. 623.]

See note under section 89, *supra*.

SEC. 95. [*Exchange of documents.* See PUBLIC DOCUMENTS, *ante*, p. 175.]

SEC. 96. [*Contracts for envelopes.* See POSTAL SERVICE, vol. 5, p. 866.]

SEC. 97. [*Blanks and letter heads for judges and judicial officers.*] All blanks and letter heads for use by the judges and other officials of the United States courts other than such as are required to be paid for by any of these officers out of the emoluments of their offices shall be printed at the Government Printing Office upon forms prescribed by the Department of Justice, and shall be distributed by it upon requisition. [28 Stat. L. 624.]

SEC. 98. [*Documents to departments, etc., libraries.* See PUBLIC DOCUMENTS, *ante*, p. 175.]

SEC. 99. [*Congressional work — extra binding — preliminary reports — delivery of publications.*] All future orders or requisitions for printing or binding shall be governed by the provisions of this Act; and all printing, binding, and other work incident to stationery or blank books required for the Senate and House of Representatives, or the committees and officers thereof, except such stationery and blank books as may be purchased by the officers of the Senate and House of Representatives for sale to members in the stationery rooms of the two Houses, together with the material necessary to such work, shall be furnished by the Public Printer on requisition of the Secretary of the Senate and the Clerk of the House of Representatives respectively: *Provided*, That each Senator and Representative shall be entitled to the binding in half morocco, or material no more expensive, of but one copy of each public document to which he may be entitled, an account of which, with each Senator and Representative, shall be kept by the Secretary and Clerk, respectively: *And provided further*, That in printing preliminary reports and other papers for the use of committees no more than fifty copies shall be ordered unless expressly authorized by the Committee on Printing of each House, respectively. No Government publications shall be delivered to officers and employees of Congress except for the use of members thereof, unless authorized by this Act or upon requisition approved by the Joint Committee on Printing. [28 Stat. L. 624.]

But see Act of Aug. 7, 1882, ch. 433, sec. 1, *infra*, p. 664.

Limitation of section. See Act of March 2, 1895, ch. 189, sec. 1, *infra*, p. 664.

Superseded Act. — The above section superseded the provision of Act of March 3, 1883, ch. 143, as follows:

"That there may be bound for each Senator, Representative, or Delegate in Congress,

one copy of each book or document issued or ordered by authority of Congress during the term of service of such Senator, Representative, or Delegate; but this provision shall not be construed as allowing any binding as aforesaid to be done of any books or documents issued during any former Congress of which said Senator, Representative, or Delegate was not a member." [22 Stat. L. 629.]

SEC. 100. [*Repeal.*] All laws in conflict with the provisions of this Act are hereby repealed. [28 Stat. L. 624.]

[SEC. 1.] [*Committee on printing of either house to serve when no joint committee exists.*] * * * At any time when there is no joint committee of the two Houses of Congress the powers and duties under the law devolving upon the Joint Committee on Printing shall be exercised and performed by the Committee then in existence of either House. * * * [28 Stat. L. 962.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189. For the constitution of the joint committee on print-

ing, see Act of Jan. 12, 1895, ch. 23, sec. 1, *supra*, p. 644.

Joint resolution directing the Public Printer to keep an account of all expenditures for printing, mailing, and binding the Congressional Records, etc.

[Res. No. 12, of June 20, 1874, 18 Stat. L. 288.]

[*Public Printer to keep and report to Congress separate account of expense of Congressional Record.*] That the Congressional Printer be, and he is hereby, directed to keep a separate and exact account in detail of all expenditures for printing, mailing, and binding the Congressional Records, including specific statements of the cost of all machinery and material which may have been or shall be used for the publication of said Record, commencing with its first publication at the Government Printing Office; and that he shall publish the amounts thus yearly expended, in his next succeeding annual report, and each succeeding report, separately from the other disbursements of his office. [18 Stat. L. 288.]

This subject seems to be fully covered by the later Act of Jan. 12, 1895, ch. 23, sec. 22. See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 934.

[SEC. 1.] [*Leave of absence to employees of Government Printing Office.*] * * * The employees of the Government Printing Office, whether employed by the piece or otherwise, shall be allowed leaves of absence with pay to the extent of not exceeding thirty days in any one fiscal year under such regulations and at such times as the Public Printer may designate at the rate of pay received by them during the time in which said leave was earned; but such leaves of absence shall not be allowed to accumulate from year to year. Such employees as are engaged on piecework shall receive the same rate of pay for the said thirty days' leave as will be paid to day hands: *Provided*, That those regularly employed on the Congressional Record shall receive leave, with pay, at the close of each session, pro rata for the time of such employment: *And provided further*, That it shall be lawful to allow pay for pro rata leave to those serving

fractional parts of a year; also to allow pay for pro rata leave of absence to employees of the Government Printing Office in any fiscal year, notwithstanding the fact that thirty days' leave of absence, with pay, may have been granted to such employees in that fiscal year on account of service rendered in a previous fiscal year. And the Public Printer is hereby authorized to pay to the legal representatives of any employees who have died during the fiscal years of eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, or may hereafter die, who have or hereafter may have any accrued leave of absence due them as such employees, and said claims to be paid out of any unexpended balances of appropriations for the payment of leaves of absence to the employees of the Government Printing Office, for the fiscal years eighteen hundred and ninety-four, eighteen hundred and ninety-five, eighteen hundred and ninety-six, and out of any future appropriations for leaves of absence. * * * [29 Stat. L. 453.]

This is from the Sundry Civil Appropriation Act of June 11, 1896, ch. 420.

See note under Act of Jan. 12, 1895, ch. 23, sec. 23, *supra*, p. 649, for provisions superseded by the provisions in the text.

For a summary of the prior statutes, and their effect upon the right of a temporary employee to leave of absence, see *U. S. v. Barringer*, (1903) 188 U. S. 577.

The purpose of the leave of absence law is to restrict work, not to increase wages. *Harrison v. U. S.*, (1891) 26 Ct. Cl. 260.

System controlling time of work.—The eight-hour law (R. S. sec. 3738), the leave of absence laws, the Act limiting wages (31 Stat. L. 643), and the common-law usage regarding the sabbath constitute a legal system controlling the government printing office, the legislative purpose being that an employee shall not work more than eight hours a day, six days a week, and eleven months a year, and shall not receive more than the prescribed rate of wages. *Harrison v. U. S.*, (1891) 26 Ct. Cl. 260.

Rules and regulations of public printer.—The public printer may prescribe rules and regulations, make leave of absence dependent on good conduct, refuse a leave in exigency, discharge an employee before he has received a leave, but he cannot grant constructive leave to persons who have ceased to be employees nor pay them money equivalent to leave. *Harrison v. U. S.*, (1891) 2 Ct. Cl. 260.

Leaves of absence are not cumulative under the statute, but are limited to thirty days in each fiscal year. They cannot be omitted in one year and doubled in the next. *Harrison v. U. S.*, (1891) 26 Ct. Cl. 260.

A leave of absence will not affect the wages of an employee. If a time worker, he will receive precisely what he would have earned during the identical period of absence; if a piece worker, he is entitled to what time workers receive during the same period. *Harrison v. U. S.*, (1891) 26 Ct. Cl. 260.

Payment to ex-employee.—Payment to a man after he has ceased to be an employee, in lieu of a leave of absence which he was entitled to but did not take, is unauthorized and forbidden by law. *Harrison v. U. S.*, (1891) 26 Ct. Cl. 260.

Temporary employees.—“An analysis of the Act of 1896 discloses nothing which lends support to the argument that, in reiterating the previous law in this Appropriation Act, it was the intention of Congress to depart from the rule applied from the beginning by conferring the right to leave of absence on a mere temporary employee. On the contrary, this statute—like the previous ones—reiterates the exception in favor of a particular class of temporary employees, and by its silence is a further manifestation of the approval by the lawmaking power of the construction of the previous statutes resulting from the rule adopted by the public printer from the beginning, excluding temporary employees from the right to leave. And this recapitulation again demonstrates that the mind of Congress was addressed to the necessity of making such changes as it deemed wise, since there is a new provision allowing the legal representatives of deceased employees who were entitled to a leave to recover the amount due therefor.” *U. S. v. Barringer*, (1903) 188 U. S. 577, *reversing* (1901) 37 Ct. Cl. 1.

[SEC. 1.] [Estimates by Public Printer—notification to departments.]

* * * And it shall be the duty of the Public Printer to submit to Congress at the beginning of its next regular session, estimates in detail under the head of Printing and binding for the service of the fiscal year eighteen hundred and ninety-seven and annually thereafter, covering appropriations requisite for all work to be done and services to be rendered under his direction by the provisions of the said Act and not previously required of him; and of the details of

all such estimates, he shall notify the heads of the Executive Departments and other Government establishments affected thereby, within such time as will enable them to omit the amounts thereof from the estimates of appropriations which they are required to submit for the fiscal year eighteen hundred and ninety-seven. * * * [28 Stat. L. 961.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189. For other provisions on this subject, see ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 891.

[*Advances to Public Printer.*] * * * Hereafter there shall be advanced to the Public Printer from time to time, as the public service may require it, and under such rules as the Secretary of the Treasury may prescribe, a sum of money not exceeding at any time the penalty of his official bond, to enable him to pay for work and material. * * * [31 Stat. L. 58.]

This is from the Urgent Deficiencies Appropriation Act of March 30, 1900, ch. 118.

This provision is an amendment of Act of Jan. 12, 1895, ch. 23, sec. 28 (see *supra*, p. 649), which was a re-enactment of Act of May 29, 194, ch. 85, 28 Stat. L. 84, which allowed

advances to the amount of four-fifths of the penalty of the bond. These Acts are themselves a substitute for R. S. sec. 3816, which allowed two-thirds only. The bond of the government printer is \$100,000. See Act of Jan. 12, 1895, ch. 23, sec. 17, *supra*, p. 647.

[SEC. 1.] [*Additional printing on envelopes for documents, etc.*] * * * The Public Printer, under section thirty-seven of the "Act providing for the public printing and binding and the distribution of public documents," approved January twelfth, eighteen hundred and ninety-five, may, at the request of any Senator, Representative, or Delegate in Congress, print on envelopes authorized to be furnished, in addition to the words therein named, the name of the Senator, Representative, or Delegate, and State, the date, and the topic or subject-matter, not exceeding twelve words. * * * [28 Stat. L. 961.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189. The section mentioned in the text is set out *supra*, p. 652.

[SEC. 1.] [*Wages to employees.*] * * * That the Public Printer may hereafter, in his discretion, pay all printers, bookbinders, and leather parers employed in the Government Printing Office at the rate of fifty cents per hour for time actually employed. * * * [31 Stat. L. 643.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

By the Act of Feb. 16, 1877, ch. 58 (see Act of Jan. 12, 1895, ch. 23, sec. 39, *supra*, p. 653), the price for composition is limited to 50 cents per 1,000 ems and 40 cents per hour for time work to printers and bookbinders. This limit of wages per hour for time work

remained in force until by Act of March 3, 1899, ch. 424, 31 Stat. L. 1119, the public printer was, for the coming fiscal year, authorized in his discretion to pay printers and bookbinders at the rate of 50 cents per hour. The paragraph in the text, by the use of the word "hereafter," makes the provision permanent.

[SEC. 1.] [*Eight-hour law.*] * * * And the Public Printer is hereby directed to rigidly enforce the provisions of the eight hour law in the Department under his charge. * * * [25 Stat. L. 57.]

This is from the Urgent Deficiencies Appropriation Act of March 30, 1888, ch. 47. See Act of Jan. 12, 1895, ch. 23, sec. 47. and note, *supra*, p. 654.

[SEC. 1.] [*Account of printing, etc., for Patent Office.*] * * * That the Public Printer shall keep an account of the actual cost of all printing and binding done for the Patent Office, and shall make a statement of such cost in his annual report. * * * [22 Stat. L. 334.]

This is from the Sundry Civil Appropriation Act of Aug. 7, 1882, ch. 433.

[SEC. 1.] [*Binding for Senate library.*] * * * The Secretary of the Senate is authorized to make requisition upon the Public Printer for the binding for the Senate library of such books as he may deem necessary at a cost not to exceed two hundred dollars per year. * * * [28 Stat. L. 958.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189.

[SEC. 1.] [*Printing for Supreme Court.*] * * * PUBLIC PRINTING AND BINDING: * * * For the Supreme Court of the United States, nine thousand dollars, to be expended under the direction of that court, of which sum two thousand dollars to be immediately available; and the printing for that court shall be done by the printer it may employ, unless it shall otherwise order. * * * [30 Stat. L. 61.]

This is from the Sundry Civil Appropriation Act of June 4, 1897, ch. 2.

The same provision occurs in Act of Dec. 22, 1896, ch. 3, 29 Stat. L. 481.

See opinion of Mr. Justice Harlan on this

provision, 6 Comp. Dec. 301. Prior legislation governing printing for the Supreme Court is contained in Act of Jan. 12, 1895, ch. 23, sec. 87, 93, *supra*, pp. 658, 659.

[SEC. 1.] [*Duplicating and filing devices for Government offices.*] * * * The Public Printer is authorized hereafter to procure and supply, on the requisition of the head of any Executive Department or other Government establishment, complete manifold blanks, books, and forms, required in duplicating processes; also complete patented devices with which to file money-order statements, or other uniform official papers, and to charge such supplies to the allotment for printing and binding of the Department or Government establishment requiring the same. * * * [32 Stat. L. 481.]

This is from the Sundry Civil Appropriation Act of June 28, 1902, ch. 1301.

[SEC. 1.] [*Binding for members of Congress.*] * * * That no binding shall be done at the Government Printing Office for Senators, Representatives, or Delegates in Congress, except that there may be bound for each Senator, Representative or Delegate, one copy of each book or document issued by order of Congress, but this provision shall not allow any binding as aforesaid, to be done of books, or documents issued by authority of and during any former Congress: * * * [22 Stat. L. 334.]

This is from the Sundry Civil Appropriation Act of Aug. 7, 1882, ch. 433. It supersedes the Act of Dec. 10, 1877, ch. 6, "An Act authorizing binding of documents for members of Congress," as follows:

"That the Public Printer, be authorized to bind at the Government Printing Office any

books, maps, charts, or documents published by the authority of Congress, upon application of any member of the Senate or House of Representatives, upon payment of the actual cost of such binding." [20 Stat. L. 5.]

See, however, Act of Jan. 12, 1895, ch. 23, sec. 99, *supra*, p. 660.

[SEC. 1.] [*Printing for committees of Congress.*] * * * That nothing in the second provision of section ninety-nine of the Act providing for the public printing and binding and the distribution of public documents, approved January twelfth, eighteen hundred and ninety-five, shall be held to contravene the orders of either House of Congress authorizing printing for the use of committees, as to the number of copies or otherwise: *Provided*, That there shall not be printed, under such orders, for the use of any committee, any hearing or other document costing in excess of five hundred dollars. * * * [28 Stat. L. 961.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189. The provision mentioned in the text is given *supra*, p. 660.

[II. ADVERTISING.]

Sec. 3823. [*Clerk of House to select newspapers in certain States to publish treaties, laws, etc.*] The Clerk of the House of Representatives shall select in Virginia, South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas, one or more newspapers, not exceeding the number allowed by law, in which such treaties and laws of the United States as may be ordered for publication in newspapers according to law shall be published, and in some one or more of which so selected all such advertisements as may be ordered for publication in said districts by any United States court or judge thereof, or by any officer of such courts, or by any executive officer of the United States, shall be published, the compensation for which and other terms of publication, shall be fixed by said Clerk at a rate not exceeding two dollars per page for the publication of treaties and laws, and not exceeding one dollar per square of eight lines of space, for the publication of advertisements, the accounts for which shall be adjusted by the proper accounting officers, and paid in the manner now authorized by law in the like cases. [R. S.]

Act of March 2, 1867, ch. 167, 14 Stat. L. 466; Act of March 29, 1867, ch. 13, 15 Stat. L. 7.

Repeal.—This section and sections 3824, 3825 following so far as they relate to the publication of laws in newspapers were repealed by R. S. sec. 79, as amended. See CONGRESS, vol. 2, p. 237. These sections so far as they relate to the publication of treaties are repealed by Act of July 31, 1876, ch. 246, *infra*, p. 667, and by the following Acts. It is doubtful if they are now of any force. See the following cases.

It was held by acting Attorney-General Jenks, in (1838) 19 Op. Atty.-Gen. 159, that R. S. secs. 3823, 3824, and 3825 were repealed as to the publication of laws by R. S. sec. 79, as amended by the Act of Feb. 18, 1875; and as to the publication of treaties, by the Act of July 31, 1876, providing for the publication of treaties in another manner; and as to the price paid for advertising, by the Act of June 20, 1878. He also held that the duties of the clerk to publish the laws and treaties therefore ceased, and he was no longer required to act; therefore the injunction made upon a court or a judge, an officer of court, or an executive officer of the United States by this section (contingent upon the action of the clerk) also ceased.

What advertisements included.—In *Moncure v. Zunts*, (1870) 11 Wall. (U. S.) 416, prior to this Act, it was held that the seventh section of the Act of Congress of March 2, 1867, 14 Stat. L. 466, providing for judicial, etc., notices, applies only to such advertisements as may be published in behalf of the government and are to be paid for out of the federal treasury. It does not effect advertisements for sale of lands under judicial process in suits between individuals.

Conditional post-office advertisement.—Where the postmaster-general sends an advertisement to a newspaper requesting its publication, if it can be done for a sum in gross specified, the request is conditional, and if the publisher inserts the advertisement he cannot recover compensation at the rates fixed by the clerks of the House of Representatives. *Wright's Case*, (1879) 15 Ct. Cl. 80.

Proposals for carrying mail.—An advertisement by the postmaster-general of proposals for carrying the mail is not included under the provisions of this section, but R. S. sec. 3941 governs such a case, even though the paper for such advertisement had been selected by the clerk under the provisions of R. S. sec. 3823. (1876) 15 Op. Atty.-Gen. 627.

Sec. 3824. [*Heads of departments and judges to be notified, and to publish only in such newspapers.*] The Clerk shall notify each head of the several Executive Departments, and each judge of the United States courts therein, of the papers selected by him in accordance with the provisions of the preceding section, and thereafter it shall be the duty of the several executive officers charged therewith to furnish to such selected papers only, an authentic copy of the publications to be made as aforesaid; and no money appropriated shall be paid for any publications or advertisements hereafter to be made in said districts, nor shall any such publication or advertisement be ordered by any department or public officer otherwise than as herein provided. [R. S.]

Act of March 2, 1867, ch. 167, 14 Stat. L. 466; Act of March 29, 1867, ch. 13, 15 Stat. L. 7. See note to section 3823, *supra*.

Sec. 3825. [*Rates of pay in all the states for publishing treaties and laws.*] The rates fixed in section thirty-eight hundred and twenty-three, to be paid for the publication of the treaties and laws of the United States in the States therein designated, shall also be paid for the same publications in all the States not designated in that section. [R. S.]

Act of March 29, 1867, ch. 13, 15 Stat. L. 8. See note to section 3823, *supra*.

Sec. 3826. [*Advertisements in Washington, D. C.*] All advertisements, notices, and proposals for contracts for all the Executive Departments of the Government, and the laws passed by Congress and executive proclamations and treaties to be published in the District of Columbia, Maryland, and Virginia, shall hereafter be advertised by publication in the three daily papers published in the District of Columbia having the largest circulation, one of which shall be selected by the Clerk of the House of Representatives, and in no others. The charges for such publications shall not be higher than such as are paid by individuals for advertising in said papers, and the same publications shall be made in each of the said papers equally as to frequency: *Provided*, That no advertisement to any State, district, or Territory, other than the District of Columbia, Maryland, or Virginia, shall be published in the papers designated, unless at the direction first made of the proper head of a Department: *And provided further*, That this section shall not be construed to allow a greater compensation for the publication of the laws passed by Congress and executive proclamations and treaties in the papers of the District of Columbia than is provided by law for such publications in other papers. [R. S.]

Act of March 2, 1867, ch. 167, 14 Stat. L. 467; Act of March 29, 1867, ch. 13, 15 Stat. L. 7; Act of July 20, 1868, ch. 176, 15 Stat. L. 110.

Repeal.—See following text.

Effect of repeal.—The joint effect of sections 853 and 3826, R. S., as regards government advertisements in newspapers published

in the District of Columbia, was to allow the compensation fixed by section 853, unless (under section 3826) that be more than is paid by private individuals for like services. But section 1 of the Act of 1875, ch. 128, repeals section 3826 for every purpose connected with claims for such services. (1876) 15 Op. Atty.-Gen. 594.

[SEC. 1.] [*Mail lettings for Maryland and Virginia—advertisements in newspapers abolished.*] * * * That hereafter the mail lettings for the States of Maryland and Virginia and for the District of Columbia shall be advertised in not more than one newspaper published in the District of Columbia, and at prices satisfactory to the Postmaster-General, not exceeding the customary rates paid in the city of Wash-

ington for ordinary commercial advertisements; and so much of section three thousand eight hundred and twenty-six of the Revised Statutes of the United States as refers to the publication of advertisements in newspapers be, and the same is hereby, repealed. [18 Stat. L. 342.]

This is from the Post-office Department Appropriation Act of March 3, 1875, ch. 128. So far as it relates to advertising of mail-lettings it is superseded by Act of March 1, 1881, ch. 96, and Act of July 26, 1892, ch. 249. See POSTAL SERVICE, vol. 5, p. 879.

Purpose of proviso.—This proviso was intended to relieve the heads of all the executive departments from the requirements of section 3826 of the Revised Statutes, respecting the publication of advertisements, notices, and proposals for Virginia, Maryland, and the District of Columbia, as well as to provide specifically respecting the publication of mail lettings by the postmaster-general for the states and district above mentioned. (1875) 14 Op. Atty.-Gen. 576.

Effect on treasury department.—Such proviso obviously has no reference to the advertising of the treasury department. (1880) 15 Op. Atty.-Gen. 282.

Discretion of departmental heads.—It is left discretionary with each head of department whether he will make the publication referred to in R. S. sec. 3826 in one or more papers of the District of Columbia. (1875) 14 Op. Atty.-Gen. 576.

Sec. 3827. [*Mail-route advertisements in District of Columbia.*] [*Superseded.*]

This section was as follows:

"Sec. 3827. No payment shall be made to any newspaper published in the District of Columbia for advertising any other mail-routes than those in Virginia and Maryland." Act of March 3, 1873, ch. 231, 17 Stat. L. 557.

A substantially similar provision appeared in Act of June 23, 1874, ch. 456, 18 Stat. L. 231.

Both sections were superseded by the provisions of the Acts noted in the note to the preceding section.

Sec. 3828. [*No advertisement without authority.*] No advertisement, notice, or proposal for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected, shall be published in any newspaper whatever, except in pursuance of a written authority for such publication from the head of such Department; and no bill for any such advertising, or publication, shall be paid, unless there be presented, with such bill, a copy of such written authority. [R. S.]

Act of July 15, 1870, ch. 292, 16 Stat. L. 308.

General or special authority.—"For anything in the letter of the statute, or the subject-matter regulated by it, the authority to advertise might as well be general as special; that is, might, under the terms of the statute, be made to comprehend and authorize the publication of successive advertisements of a particular class or kind as well as a single one." U. S. v. Odeneal, (1882) 10 Fed. Rep. 616.

General order by representative of departmental head.—An advertisement is sufficiently authorized to meet the requirements of this section if it is made under the authority of an officer publishing a general

order, upon the authority of his office, and as the representative of the head of the department, wherein he informed the officer directed to advertise that by the direction of the head of the department he was authorized to publish such advertisement. A copy of such general order attached to the bills for publishing such advertisements is sufficient for the allowance of the account. U. S. v. Odeneal, (1882) 10 Fed. Rep. 616.

What offices included.—The provisions of this section extend to all the offices connected as stated in the statute, no matter where they may be situated, and not merely to such offices as are at the seat of government. (1878) 16 Op. Atty.-Gen. 616.

[*Publication of proclamations and treaties — advertisements for contracts in District of Columbia.*] That all executive proclamations, & all treaties required by law to be published, shall be published in only one newspaper the same to be printed and published in the District of Columbia and to be designated by the Secretary of State and in no case of advertisement for contracts for the public service shall the same be published in any newspaper

published and printed in the District of Columbia unless the supplies or labor covered by such advertisement are to be furnished or performed in said District of Columbia. * * * [19 Stat. L. 105.]

This is from the Sundry Civil Appropriation Act of July 31, 1876, ch. 246.

[SEC. 1.] [*Rate of payment for advertisements.*] That hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts; such rates to be ascertained from sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise: * * * but the heads of the several departments may secure lower terms at special rates whenever the public interest requires it. * * * [20 Stat. L. 216.]

This is from the Sundry Civil Appropriation Act of June 20, 1878, ch. 359.

An act to regulate the award of and compensation for public advertising in the District of Columbia.

[Act of Jan. 21, 1881, ch. 25, 21 Stat. L. 317.]

[SEC. 1.] [*Advertising in District of Columbia — rate of payment.*] That all advertising required by existing laws to be done in the District of Columbia by any of the departments of the government shall be given to one daily and one weekly newspaper of each of the two principal political parties and to one daily and one weekly neutral newspaper: *Provided*, That the rates of compensation for such service shall in no case exceed the regular commercial rate of the newspapers selected; nor shall any advertisement be paid for unless published in accordance with section thirty-eight hundred and twenty-eight of the Revised Statutes. [21 Stat. L. 317.]

SEC. 2. [*Repeal.*] All laws or parts of laws inconsistent herewith are hereby repealed. [21 Stat. L. 317.]

[III. BUREAU OF ENGRAVING AND PRINTING.]

[SEC. 1.] [*Engraving and printing notes, bonds, and other securities.*] * * * For * * * expenses of engraving and printing notes, bonds, and other securities of the United States. * * * *Provided*, That the above-named notes, currency, and other securities of the United States be executed with not less than three plate-printings: *And provided further*, That the Secretary of the Treasury shall have executed one or two of such printings by such responsible and capable and experienced bank-note companies or bank-note engravers as may contract for the same at the lowest cost to the Government, and at prices not greater than those heretofore paid for the same class of work; no company or establishment executing more than one printing upon the same note or obligation, and the final printing and finishing to be executed in the Treasury Department. * * * [18 Stat. L. 373.]

This is from the Sundry Civil Appropriation Act of March 3, 1875, ch. 130.

"This provision, it is understood, has been held, for several years past, by the treasury department not to be of a permanent nature. If permanent, it may perhaps be considered as superseded by 1877, March 3, ch. 105. It is impossible to determine

extrajudicially whether this and many other provisions in annual appropriation acts are permanent or temporary. Where the language is such as to admit of doubt on the question, the provisions have been inserted in this edition."—*Compilers' note, 1 Supp. R. S. 73.*

[*Engraving and printing notes, bonds, and other securities in Treasury Department.*] * * * For labor and expenses of engraving and printing, namely: For * * * engraving and printing notes, bonds, and other securities of the United States * * * : *Provided*, The work be performed at the Treasury Department, *And provided further*, That it can be done as cheaply, as perfectly, and as safely and all contracts already made shall be faithfully carried out. * * * [19 Stat. L. 353.]

This is from the Sundry Civil Appropriation Act of March 3, 1877, ch. 105.
See note to preceding text.

An act relating to printing impressions from portraits and vignettes.

[*Act of Dec. 22, 1879, ch. 2, 21 Stat. L. 59.*]

[*Impressions of portraits, etc., may be furnished from Bureau of Engraving.*] That the Secretary of the Treasury, at the request of a Senator, Representative, or Delegate in Congress, the head of a department or bureau, art association, or library, be, and he is hereby authorized to furnish impressions from any portrait or vignette which is now, or may hereafter be, a part of the engraved stock of the Bureau of Engraving and Printing, at such rates and under such conditions as he may deem necessary to protect the public interests. [21 Stat. L. 59.]

[*SEC. 1.*] [*Receipts for miscellaneous work covered into the Treasury.*] * * * Hereafter receipts for miscellaneous work authorized by law to be performed by the Bureau of Engraving and Printing for the several Departments of the Government, and the amounts properly chargeable to national banks for engraving their plates shall be deposited, and covered into the Treasury as miscellaneous receipts. * * * [24 Stat. L. 227.]

This is from the Sundry Civil Appropriation Act of Aug. 4, 1886, ch. 902.

An act to allow thirty days' leave of absence to employees in the Bureau of Engraving and Printing.

[*Act of July 6, 1892, ch. 154, 27 Stat. L. 87.*]

[*Leave of absence to employees.*] That the employees of the Bureau of Engraving and Printing, including the pieceworkers, shall be allowed leave of absence with pay, not exceeding thirty days in any one year, under such regulations and at such time or times as the Chief of the Bureau, with the approval of the Secretary of the Treasury, may prescribe and designate: *Provided*. That the length of the leave of absence of any employee of said Bureau doing piecework, and the pay during such leave of absence, shall be determined by

the average amount of work done by such person and the pay therefor during the several months of the year. [27 Stat. L. 87.]

This Act superseded the provisions of the Act of March 3, 1887, ch. 392, as follows:

[Sec. 1.] * * * "The employees of the Bureau of Engraving and Printing, including piece-workers, shall be allowed leave of absence, with pay, not exceeding fifteen days in any one year, at such time as the Chief of the Bureau may designate." * * * [24 Stat. L. 607.]

Effect of other Acts.—The nature of the work done in the bureau of engraving and printing is so different from that done in other executive departments as to confirm the view that the special Act governing leaves of absence to its employees was not intended to be repealed by the Act of March 3, 1893, ch. 211, sec. 5. (1896) 21 Op. Atty.-Gen. 338.

Effect of proviso.—As the piece-worker is entitled to the leave of absence with pay only in accord with this Act, it cannot be said that any reduction arises from the proviso, but on the other hand the proviso designates the measure by which the length of the leave and the amount of leave pay may be determined. (1892) 20 Op. Atty.-Gen. 429.

Authority to execute provisions.—"While the proviso may be somewhat obscure as to the method of its execution, its purpose does not admit of question, and authority to make all necessary regulations to execute the Act and carry out the intent of the proviso is

explicitly given." (1892) 20 Op. Atty.-Gen. 429.

Extent of allowance to piece-worker.—"The leave of absence cannot extend beyond thirty days per year, and the pay cannot exceed the average pay of the employee concerned during the several months of the year. Thirty days' absence per year, with a continuance of average compensation during the absence, appears to be the maximum allowance of the Act in favor of a piece-worker so situated as to receive the greatest benefit therefrom." (1892) 20 Op. Atty.-Gen. 429.

Piece-workers subject to rules of department, etc.—It is evident that Congress intended to establish the rule that the piece-workers referred to, who continue in regular employment throughout the year, may have not exceeding thirty days' leave of absence annually, subject to the rules of the department and the proper supervision of the chief of the bureau acting under the approval of the secretary. (1892) 20 Op. Atty.-Gen. 429.

Piece-worker earning less than maximum.—"The length of the leave of absence and the amount of pay during the same, given to a piece-worker whose service and consequent earnings are less than the maximum, must be determined by the average amount of his work and of his pay therefor." (1892) 20 Op. Atty.-Gen. 429.

[*Leave of absence to compositors and pressmen in awards division.*] * * * That the compositors and pressmen employed in the awards division of the Bureau of Engraving and Printing shall be allowed leave of absence with pay not exceeding thirty days in any one year, or a pro rata portion thereof for a less time than one year, under such regulations and such time or times as the Chief of the Bureau, with the approval of the Secretary of the Treasury, may prescribe and designate, and in conformity with the Act approved July sixth, eighteen hundred and ninety-two, granting leaves of absence with pay to the employees of the Bureau of Engraving and Printing; * * * [29 Stat. L. 275.]

This is from the Deficiencies Appropriation Act of June 8, 1896, ch. 373.

[Sec. 1.] [*Control of business of Bureau.*] * * * That all the business of the Bureau of Engraving and Printing shall be under the immediate control of the director of said Bureau, subject to the direction of the Secretary of the Treasury, and the director of the said Bureau shall report to and be responsible directly to the Secretary of the Treasury. * * * [29 Stat. L. 421.]

This is from the Sundry Civil Appropriation Act of June 11, 1896, ch. 420. The same provision is contained in the Appropria-

tion Act of June 4, 1897, ch. 2, sec. 1, 30 Stat. L. 18.

[SEC. 1.] [*Bonds, notes, and checks to be printed on hand-roller presses.*]

* * * Engraving and Printing. That hereafter all bonds, notes, and checks shall be printed from hand-roller presses. * * * [*30 Stat. L. 605.*]

This is from the Sundry Civil Appropriation Act of July 1, 1898, ch. 546.

[SEC. 1.] [*Internal-revenue stamps to be printed on hand-roller presses.*]

* * * That the faces of all tobacco stamps for use upon packages of two pounds and upward, and of all beer, whiskey, cigar, snuff, oleomargarine, and special liquor tax stamps, shall hereafter be printed from engraved plates upon hand-roller plate-printing presses. * * * [*30 Stat. L. 1082.*]

This is from the Sundry Civil Appropriation Act of March 3, 1899, ch. 424.

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[I. SEAT OF GOVERNMENT AND PUBLIC BUILDINGS AND GROUNDS IN DISTRICT OF COLUMBIA.]

Sec. 1795. [*Permanent seat of Government.*] All that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of Government of the United States. [R. S.]

Act of July 16, 1790, ch. 28, 1 Stat. L. 130. Sections 1795-1835 constitute title 21 of the Revised Statutes, entitled "Seat of Government, including the Public Buildings."

For a historical outline of Acts establishing District of Columbia and the city of Washington, the boundaries and maps of the city and rights thereunder, see *Morris v. U. S.*, (1899) 174 U. S. 196, and cases there cited.

Plan of city of Washington.—The Act of July 16, 1790, for establishing the seat of government of the United States, authorized commissioners, who were to be appointed by the President, to purchase or accept such quantity of land on the eastern side of the Potomac, within the District of Columbia, as the President should deem proper for the use of the United States; and by a liberal construction of that provision only has it been claimed that the President had power to establish a plan of the city; but the deeds of the original proprietors require the trustees, appointed by them, to convey to the commis-

sioners such streets, squares, parcels, and lots as the President should deem proper. In pursuance of the power thus conferred, President Washington, in 1797, executed an instrument of writing, in which he directed the trustees to convey to the commissioners all the streets delineated in a plan intended to be but not annexed. President Washington having previously ratified Ellicott's engraved plan of the city, it must now be presumed that Ellicott's plan was what he intended to annex; and that as it indicated streets through the mall, it was originally intended that streets might be opened through it. And although President Adams subsequently gave his sanction to another plan, said by the commissioners to have been annexed, which did not indicate streets through the mall, the promulgation, publication, and exhibition of Ellicott's plan on the day of sale of lots amount to a pledge of the public faith that the streets thus indicated should be opened. (1820) 1 Op. Atty.-Gen. 416.

Sec. 1796. [*Public offices to be exercised at seat of Government.*] All offices attached to the seat of Government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law. [R. S.]

Act of July 16, 1790, ch. 28, 1 Stat. L. 130. Removal of public offices on ground of

health. See HEALTH AND QUARANTINE, vol. 3, p. 216.

Sec. 1797. [*Chief of engineers to have charge of public buildings and grounds in District of Columbia.*] That the Chief of Engineers shall have charge of the public buildings and grounds in the District of Columbia, under such regulations as may be prescribed by the President, through the War Department, except those buildings and grounds which are otherwise provided for by law; and when it shall be made to appear to the said Chief of Engineers, or to the officer under his direction having immediate charge of said public buildings and grounds, that any person or persons is in unlawful occupation of any portion of said public lands in the District of Columbia, it shall be the duty of said officer in charge thereof to notify the marshal of the District of Columbia in writing of such unlawful occupation, and the said marshal shall thereupon cause the said trespasser or trespassers to be ejected from said lands, and shall restore possession of the same to the officer charged by law with the custody thereof. [R. S.]

This section was amended "to read as" above by the Act of April 28, 1902, ch. 594, sec. 1, 32 Stat. L. 152. The section originally read as follows:

"Sec. 1797. [*Chief of engineers to have charge of public buildings and grounds.*] The Chief of Engineers shall have charge of the public buildings and grounds in the District of Columbia, under such regulations as

may be prescribed by the President through the War Department, except those buildings and grounds which are otherwise provided for by law." Act of Aug. 4, 1854, ch. 242, 10 Stat. L. 573; Act of March 2, 1867, ch. 167, 14 Stat. L. 466.

Under what department.—The office of commissioner of public buildings, originally placed under the supervision of the President,

subsequently transferred to the department of the interior, and afterwards abolished, its duties being transferred to the chief engineer of the army, leaves the officer performing its duties under either the department of the interior or the department of war, but certainly under one or the other. Therefore a watchman employed by him is in one of the executive departments of the government. *Ashfield's Case*, 11 Ct. Cl. 153.

Who may be ejected as trespasser.—The only intent of this section is to empower the United States marshal of the District of Columbia to eject summarily transient or disturbing persons from the public grounds in

the district under the direct supervision of the chief of engineers, and does not apply to occupants who have been in actual possession, under a claim of right, for a long period of years. In such cases the government should apply to the courts to obtain possession. (1903) 24 Op. Atty.-Gen. 616.

Railway in streets of Washington.—There is no provision of law which expressly or by implication gives the secretary of the interior or the commissioner of public buildings (chief of engineers) any authority to consent to the laying of a railway along the streets or avenues of the city of Washington. (1862) 10 Op. Atty.-Gen. 220.

Sec. 1798. [*Estimates and appropriations.*] All estimates for public buildings and grounds in charge of the Chief of Engineers shall be approved and submitted by the Secretary of War, through the Treasury Department, as other estimates, to the two Houses of Congress; and all appropriations which have been or may be hereafter made for repairs or improvements of the public buildings and grounds in the District of Columbia, and now in charge of the Chief of Engineers, shall be expended under the direction of the Secretary of War. [*R. S.*]

Act of Aug. 4, 1854, ch. 242, 10 Stat. L. 573.

Sec. 1799. [*Employees in office of public buildings.*] The Chief of Engineers in charge of public buildings and grounds is authorized to employ in his office and about the public buildings and grounds under his control such number of persons for such employments, and at such rates of compensation, as may be appropriated for by Congress from year to year. [*R. S.*]

Act of March 3, 1871, ch. 113, 16 Stat. L. 479; Act of May 8, 1872, ch. 140, 17 Stat. L. 65.

Sec. 1800. [*Chief of Engineers to have charge of Washington aqueduct.*] The Chief of Engineers shall have the immediate superintendence of the Washington aqueduct, together with all rights, appurtenances, and fixtures connected with the same, and belonging to the United States, and of all other public works and improvements in the District of Columbia in which the Government has an interest, and which are not otherwise specially provided for by law. [*R. S.*]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435; Act of June 25, 1860, ch. 211, 12 Stat. L. 106; Act of March 2, 1867, ch. 167, 14 Stat. L. 466; Act of March 30, 1867, ch. 20, 15 Stat. L. 12.

Sec. 1801. [*Chief of Engineers to obey the President.*] He shall obey, in the discharge of the duties mentioned in the preceding section, such regulations, pursuant to law, as may be prescribed by the President, through the Department of War. [*R. S.*]

Act of May 2, 1828, ch. 45, 4 Stat. L. 266; Act of March 3, 1859, ch. 84, 11 Stat. L. 435; Act of June 25, 1860, ch. 211, 12 Stat. L. 106; Act of March 30, 1867, ch. 20, 15 Stat. L. 12.

Sec. 1802. [*How moneys for aqueduct, etc., to be expended.*] All moneys appropriated or hereafter appropriated for the Washington Aqueduct, and for the other public works in the District of Columbia, not otherwise expressly provided for by law, shall be expended under the direction of the Secretary of War. [*R. S.*]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435; Act of June 18, 1862, Res. 36, 12 Stat. L. 620; Act of March 30, 1867, ch. 20, 15 Stat. L. 12.

Sec. 1803. [*Unauthorized opening of pipes punishable.*] No person, unless by consent of the Chief of Engineers in charge of the public buildings and works, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than fifty nor more than five hundred dollars. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 436.

Sec. 1804. [*Wilful, etc., breaking, etc., of pipes punishable.*] Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service-pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of Washington and Georgetown, shall be punishable by imprisonment in the county jail for not more than two years. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 436.

Sec. 1805. [*Laying of pipes for use of public buildings.*] No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington and Georgetown, must be paid by the District of Columbia, in the manner provided by law. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 436.

[*Shutting off flow of water in public buildings.*] * * * And all officers in charge of public buildings in the District of Columbia shall cause the flow of water in the buildings under their charge to be shut off from five o'clock post meridian to eight o'clock ante meridian: *Provided*, That the water in said public buildings is not necessarily in use for public business. * * * [22 Stat. L. 615.]

This is from the Sundry Civil Appropriation Act of March 3, 1883, ch. 143.

Sec. 1806. [*Maliciously making water impure punishable.*] Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the cities of Washington and Georgetown, becomes impure, filthy, or unfit for use, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned at hard labor in the District of Columbia not more than three years nor less than one year. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 437.

Sec. 1807. [*Compensation of Chief of Engineers.*] The Chief of Engineers shall receive no compensation, other than his regular pay as an officer of the Corps of Engineers, for the services required of him under the provisions of this Title. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1808. [*Apartments, stationery, etc.*] He shall be furnished official apartments in one of the public buildings in the city of Washington, as may be directed by the President, and shall be supplied by the Government with the

stationery, instruments, books, and furniture which may be required for the performance of his duties. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1809. [*Record of property to be kept.*] He shall keep in his office a complete record of all the lands and other property connected with or belonging to the Washington Aqueduct and other public works under his charge, together with accurate plans and surveys of the public grounds and reservations in the District of Columbia. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1810. [*Authority, etc.*] He and his necessary assistants are empowered to use all lawful means for the discharge of their duties; and, particularly, he shall have full control over the Washington Aqueduct, to regulate the manner in which the authorities of the District of Columbia may tap the supply of water to the inhabitants thereof; and he shall stop the same whenever it is found to be no more than adequate to the wants of the public buildings and grounds. [R. S.]

Act of May 2, 1828, ch. 45, 4 Stat. L. 266; Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1811. [*Right of appeal to Secretary of War.*] His decision on all questions concerning the supply of water, as provided in the preceding section, shall be subject to appeal to the Secretary of War only. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1812. [*Reports.*] The Chief of Engineers shall, as Superintendent of Public Buildings and Grounds, and as Superintendent of the Washington Aqueduct, annually submit the following reports to the Secretary of War in time to accompany the annual message of the President to Congress, namely:

First. A report of his operations for the preceding year, with an account of the manner in which all appropriations for public buildings and grounds have been applied, including a statement of the number of public lots sold, or remaining unsold each year, of the condition of the public buildings and grounds, and of the measures necessary to be taken for the care and preservation of all public property under his charge.

Second. A report of the condition, progress, repairs, casualties, and expenditures of the Washington Aqueduct and other public works under his charge. [R. S.]

Act of March 3, 1829, ch. 51, 4 Stat. L. 363; Act of Aug. 4, 1854, ch. 242, 10 Stat. L. 573; Act of March 3, 1859, ch. 84, 11 Stat. L. 435; Act of June 25, 1860, ch. 211, 12 Stat. L. 106.

Sec. 1813. [*Limitation on contracts of Board of Public Works.*] The Board of Public Works of said District are prohibited from incurring or contracting liabilities on behalf of the United States in the improvement of streets, avenues, and reservations beyond the amount of appropriations previously made by Congress, and from entering into any contract touching such improvements on behalf of the United States, except in pursuance of appropriations made by Congress. [R. S.]

Act of March 3, 1873, ch. 227, 17 Stat. L. 526.

R. S. secs. 1814-1817 are given *infra*, p. 687 *et seq.*

Sec. 1818. [*Improper appropriation of streets, etc.*] The Secretary of the Interior is directed to prevent the improper appropriation or occupation of any

of the public streets, avenues, squares, or reservations in the city of Washington, belonging to the United States, and to reclaim the same if unlawfully appropriated; and particularly to prevent the erection of any permanent building upon any property reserved to or for the use of the United States, unless plainly authorized by act of Congress, and to report to Congress at the commencement of each session his proceedings in the premises, together with a full statement of all such property, and how, and by what authority, the same is occupied or claimed. Nothing herein contained shall be construed to interfere with the temporary and proper occupation of any portion of such property, by lawful authority, for the legitimate purposes of the United States. [R. S.]

Res. of June 30, 1864, No. 56, 13 Stat. L. 412.
R. S. secs. 1819-1826 are given *infra*, p. 691
et seq.

The stretching of wires without authority across the Iowa reservation in the District of

Columbia is governed by this section and should be brought to the attention of the secretary of the interior. (1895) 21 Op. Atty.-Gen. 224.

Sec. 1827. [*Superintendent, etc., of Botanical Garden and greenhouses.*] There shall be a superintendent, assistants, and two additional laborers in the Botanical Garden and green-houses, who shall be under the direction of the Joint Committee on the Library. [R. S.]

Act of March 3, 1873, ch. 226, 17 Stat. L. 491.

[SEC. 1.] [*Propagation of trees, etc., in greenhouses and nursery.*] * * * BUILDINGS AND GROUNDS IN AND AROUND WASHINGTON * * * hereafter only such trees, shrubs, and plants shall be propagated at the greenhouses and nursery as are suitable for planting in the public reservations, to which purpose only the said productions of the greenhouses and nursery shall be applied. * * * [20 Stat. L. 220.]

This is from the Sundry Civil Appropriation Act of June 20, 1878, ch. 359.

Sec. 1828. [*Report of warden of penitentiary.* See PRISONS AND PRISONERS, *ante*, p. 30.]

R. S. secs. 1829-1834 are given *infra*, pp. 708, 709, 695.

Sec. 1835. [*Extra pay prohibited.*] No pay or compensation other than is fixed by this Title shall be allowed to any officer, employé, or laborer embraced within the provisions hereof. [R. S.]

Act of July 12, 1870, ch. 251, 16 Stat. L. 250.

[SEC. 1.] [*Use of buildings, etc., for public ceremonies forbidden.*] * * * That hereafter no public building, or the approaches thereto, other than the Capitol building and the White House, in the District of Columbia, shall be used or occupied in any manner whatever in connection with ceremonies attending the inauguration of President of the United States, or other public function, except as may hereafter be expressly authorized by law. * * * [32 Stat. L. 152.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 594.

[SEC. 1.] [*Use of public grounds for children's playgrounds.*] * * * The officer in charge of public buildings and grounds may authorize the temporary use of a portion of the Monument Grounds or grounds south of the Executive Mansion or other reservations, in the District of Columbia, for a children's play-ground, under regulations to be prescribed by him. * * * [26 Stat. L. 396.]

This is from the Sundry Civil Appropriation Act of Aug. 30, 1890, ch. 837.

[*Rent of buildings without appropriations forbidden.*] * * * Hereafter no contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building. * * * [19 Stat. L. 370.]

This is from the Deficiencies Appropriation Act of March 3, 1877, ch. 106. For exceptions as to Washington City post office and branches, see 1888, March 26, ch. 43 (25 Stat. L. 46), and 1890, June 30, ch. 641 (26 Stat. L. 207), both omitted as of local application only.

Where an appropriation is not in terms made for the rent of any building or part of any building in the District of Columbia to be used for governmental purposes where no such provision is found elsewhere, a lease for that purpose is prohibited by this Act and a claim for rent thereunder is inadmissible. (1881) 17 Op. Atty.-Gen. 87.

Rent of post offices. — The postmaster-gen-

eral being authorized by law to establish post offices may procure buildings for them, and while he cannot bind the government by an express contract, his action will render the government liable to the owner of the building rented for just compensation. *Semmes v. U. S.*, (1891) 26 Ct. Cl. 119. See also *Rives v. U. S.*, (1893) 28 Ct. Cl. 249.

Office for officer in charge of construction. — The hire of a building to be used as an office by an officer assigned to the duty of taking charge of the construction of a public building, is in violation of this Act, where no appropriation is made for such purpose. (1877) 15 Op. Atty.-Gen. 274.

[SEC. 1.] [*Rent of other buildings.*] * * * And where buildings are rented for public use in the District of Columbia, the executive departments are authorized, whenever it shall be advantageous to the public interest, to rent others in their stead: *Provided*, That no increase in the number of buildings now in use, nor in the amounts paid for rents, shall result therefrom. * * * [22 Stat. L. 241.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Aug. 5, 1882, ch. 389. A similar provision was contained in the Act of March 3, 1881, ch. 130, 21 Stat. L. 404.

[*Account of consumption of gas.*] * * * That the Superintendent of meters at the Capitol shall hereafter take the statement of the meters of the several Department buildings in the city of Washington, and render to the proper accounting officers of the Treasury Department the consumption of gas each month in said buildings respectively. * * * [19 Stat. L. 115.]

This is from the Sundry Civil Appropriation Act of July 31, 1876, ch. 246. The provision is repeated in the Act of March 3, 1877, ch. 105, 19 Stat. L. 359.

SEC. 15. [*Laws and regulations of District of Columbia for protection of property extended to public buildings and grounds.*] That the provisions of the several laws and regulations within the District of Columbia for the pro-

tection of public or private property and the preservation of peace and order be, and the same are hereby extended to all public buildings and public grounds belonging to the United States within the District of Columbia. And any person guilty of disorderly and unlawful conduct in or about the same, or who shall willfully injure the buildings or shrubs, or shall pull down, impair or otherwise injure any fence, wall, or other enclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall, upon conviction thereof, be fined not more than fifty dollars. [27 Stat. L. 325.]

This is from the Act of July 29, 1892, ch. 320, "An Act for the preservation of the public peace and the protection of property

within the District of Columbia." The other provisions of the Act are not within the scope of this work.

[*Powers of District of Columbia police extended to public squares, etc.*] * * * For * * * the metropolitan police for the District of Columbia, * * * the duties devolved and the authority conferred upon the board of metropolitan police by law, for police purposes, in said District, shall extend to and include all public squares or places; and said board is hereby authorized and required to make appropriate rules and regulations in relation thereto. * * * [19 Stat. L. 109.]

This is from the Sundry Civil Appropriation Act of July 31, 1876, ch. 246. The provision is repeated with slight verbal change

from the Act of March 3, 1875, ch. 130, 18 Stat. L. 385. It is again repeated in the Act of March 3, 1877, ch. 105, 19 Stat. L. 346.

[SEC. 1.] [*Powers and duties of watchmen in public squares and reservations.*] * * * That hereafter all watchmen provided for by the United States Government for service in any of the public squares and reservations in the District of Columbia shall have and perform the same powers and duties as the Metropolitan police of said District. * * * [22 Stat. L. 243.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Aug. 5, 1882, ch. 389.

[SEC. 1.] [*Medical attendance to park watchmen.*] * * * That the park watchmen now provided for under the above heading of public buildings and grounds, and those that may hereafter be provided for by law for service in any of the public squares and reservations in the District of Columbia, shall receive free medical attendance, the same as the Metropolitan Police of said District. * * * [32 Stat. L. 152.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 594.

The above heading of "public buildings and grounds" is one of the usual headings interspersed in appropriation acts.

An act in relation to the lines of telegraph connecting the Capitol with the various Departments of the Government.

[Act of Feb. 4, 1874, ch. 22, 18 Stat. L. 14.]

[*Telegraph between Capitol and Departments—control and operation.*] That the lines of telegraph, connecting the Capitol with the various Departments in Washington, constructed under and by virtue of the act of Congress

approved March third, eighteen hundred and seventy-three, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," be, and the same are hereby, placed under the supervision of the officer in charge of the public buildings and grounds; and that the said officer be authorized and empowered to make rules and regulations for the working of said lines. And the Secretary or Head of each Executive Department, and the Congressional Printer, are hereby authorized to detail one person from their present force of employees to operate the instruments in said Departments and printing office, and each House of Congress may provide for the employment of an operator in their respective wings of the Capitol, at a compensation not exceeding one hundred dollars per month, during the sessions of Congress. [18 Stat. L. 14.]

[*Use of telegraph.*] * * * That said lines of telegraph shall be for the use only of Senators, Members of Congress, Judges of the United States courts, and officers of Congress and of the Executive Departments, and solely on public business. [18 Stat. L. 20.]

This is from the Act of March 7, 1874, ch. 50, "An act making appropriation to pay the operators of the government telegraph connecting the departments with the two houses of Congress."

[*Sale of condemned material or lines.*] * * * Telegraph to connect the Capitol with the departments of the Government Printing Office: * * * and the engineer in charge of public buildings and grounds is hereby authorized to sell any condemned material or lines not needed by the departments, and cover the proceeds in the Treasury. * * * [20 Stat. L. 388.]

This is from the Sundry Civil Appropriation Act of March 3, 1879, ch. 182. Injuries to government telegraph lines. See TELEGRAPH AND CABLE LINES.

[*Washington Monument — custody of Secretary of War.*] * * * For the care and maintenance of the Washington Monument * * * dollars, to be expended under the direction of the Secretary of War, who is hereby and hereafter charged with the custody, care, and protection of the monument. [25 Stat. L. 533.]

This is from the Sundry Civil Appropriation Act of Oct. 2, 1888, ch. 1069.

An Act To vest in the Commissioners of the District of Columbia control of the street parking in said District.

[Act of July 1, 1898, ch. 543, 30 Stat. L. 570.]

[SEC. 1.] [*Street parking — control of Commissioners of District of Columbia.*] The jurisdiction and control of the street parking in the streets and avenues of the District of Columbia, is hereby transferred to and vested in the Commissioners of the District of Columbia. [30 Stat. L. 570.]

SEC. 2. [*Park system — control — what to comprise.*] That the park system of the District of Columbia is hereby placed under the exclusive charge and control of the Chief of Engineers of the United States Army, under such regulations as may be prescribed by the President of the United States, through the Secretary of War.

The said park system shall be held to comprise:

(a) All public spaces laid down as reservations on the map of eighteen hundred and ninety-four accompanying the annual report for eighteen hundred and ninety-four of the officer in charge of public buildings and grounds;

(b) All portions of the space in the streets and avenues of the said District, after the same shall have been set aside by the Commissioners of the District of Columbia for park purposes.

Provided, That no areas less than two hundred and fifty square feet between side walk lines shall be included within the said park system and no improvements shall be made in unimproved public spaces in streets between building lines or building lines prolonged until the outlines of such portions as are to be improved as parks, shall have been laid out by the Commissioners of the District of Columbia: *And provided further*, That the Chief of Engineers is authorized temporarily to turn over the care of any of the parking spaces included in Class "B" above, to private owners of adjoining lands under such regulations as he may prescribe and with the condition that the said private owners shall pay special assessments for improvements contiguous to such parking, under the same regulations as are or may be prescribed for private lands: *And provided further*, That where in any portion of a street more than one-half of the front is occupied and used for business purposes, the Commissioners are authorized and directed to denominate such portion of the street as a business street and shall authorize the use for business purposes by abutting property owners of so much of the sidewalk and parking as may not be needed, in the judgment of said Commissioners, by the general public, under such general regulations as the said Commissioners may prescribe. [30 Stat. L. 570.]

SEC. 3. [*Permits for projections.*] This Act shall not affect in any manner the provisions in the Act of March third, eighteen hundred and ninety-one, entitled "An Act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for prior years, and for other purposes," that no permits for projections beyond the building line on the streets and avenues of the city of Washington shall be granted, except upon special application and with the concurrence of all said commissioners and the approval of the Secretary of War; and the operation of said provision, is hereby extended to the entire District of Columbia. [30 Stat. L. 570.]

SEC. 4. [*Widening roadway.*] That when, in the judgment of the Commissioners of the District of Columbia, the public necessity or convenience requires them to enter upon any of the spaces or reservations under the jurisdiction of the Chief of Engineers for the purpose of widening the roadway of any street or avenue adjacent thereto or to establish sidewalks along the same, the Chief of Engineers, with the approval of the Secretary of War, is authorized to grant the necessary permission upon the application of the Commissioners. [30 Stat. L. 570.]

SEC. 5. [*Transfer of spaces.*] That when in accordance with law or mutual legal agreement, spaces or portions of public land are transferred from the

jurisdiction of the Chief of Engineers of the United States Army, as established by this Act to that of the Commissioners of the District of Columbia, or vice versa, the letters exchanged between them of transfer and acceptance shall be sufficient authority for the necessary change in the official maps and for record when necessary. [30 Stat. L. 570.]

SEC. 6. [*Regulations.*] That the said Chief of Engineers and the said Commissioners are hereby authorized to make all needful rules and regulations for the government and proper care of all the public grounds placed by this Act under their respective charge and control; and to annex to such rules and regulations such reasonable penalties as will secure their enforcement. [30 Stat. L. 571.]

SEC. 7. [*Repeal.*] All acts or parts of acts inconsistent with this Act are hereby repealed; but nothing contained in this Act shall be construed to affect in any way any pending litigation involving the validity or invalidity of the occupation of any public space or reservation in the District of Columbia [30 Stat. L. 571.]

An Act Relative to the control of wharf property and certain public spaces in the District of Columbia.

[*Act of March 3, 1899, ch. 458, 30 Stat. L. 1377.*]

[SEC. 1.] [*Control of wharves, piers, etc., and water front.*] That, with the exceptions hereinafter provided, the Commissioners of the District of Columbia shall have the exclusive charge and control of all wharf property belonging to the United States, or to the District of Columbia within said District, including all the wharves, piers, bulkheads, and structures thereon and waters adjacent thereto within the pier lines, and all slips, basins, docks, water fronts, land under water, and structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which are now owned or possessed by the United States or the District of Columbia, or to which they or either of them is or may become entitled, or which they or either of them may acquire under the provisions hereof or otherwise; and said Commissioners of the District of Columbia shall have exclusive charge and control of the repairing, building, rebuilding, maintaining, altering, strengthening, leasing, and protecting said property and every part thereof, and all the cleaning, dredging and deepening necessary in and about the same within the pier lines. Said Commissioners are also hereby authorized and empowered to make all needful rules and regulations for the government and control of all wharves, piers, bulkheads, and structures thereon, and waters adjacent thereto within the pier lines, and all the basins, slips, and docks, with the land under water, in said District not owned by the United States or the District of Columbia: *Provided*, That the following described property shall be placed under the immediate jurisdiction and control of the Chief of Engineers of the United States: The banks of the Potomac River from the north line of the Arsenal Grounds to the southern curb line of N street south; also five hundred linear feet of shore line in the Flushing Reservoir at the foot of Seventeenth street, west, and west from the western curb of said street, including a levee one hundred feet wide. [30 Stat. L. 1377.]

As to the ownership of lands under the Potomac river, the river front of the city of Washington, the riparian rights of those building wharves, their claims to the river front and for improvements, see *Morris v. U. S.*, (1899) 174 U. S. 196, and cases there cited.

SEC. 2. [*Rules and regulations — penalties — rents.*] That said Commissioners and the Chief of Engineers of the United States Army are hereby authorized and empowered to make all needful rules and regulations for the government and proper care of all the property placed in their charge and under their respective control by the provisions of section one of this Act and to annex such reasonable penalties to said rules and regulations as will secure their enforcement; and also to make and enforce rules and regulations in regard to building and repairing wharves, the rental thereof, and the rate of wharfage. All rents so collected shall be covered into the Treasury of the United States, one-half to be placed to the credit of the United States and one-half to the credit of the District of Columbia. No lease made under the provisions of this Act shall extend beyond the period of ten years. * * * [*30 Stat. L. 1378.*]

The omitted part of the section relates to the Potomac park. See PUBLIC PARKS, *ante*, p. 615.

Authority of chief of engineers. — The chief of engineers is not now, and never has been, clothed with authority to grant licenses for the erection of wharves along the river front of the city of Washington. (1886) 18 Op. Atty.-Gen. 441.

Mandamus to city officials. — A mandamus

will not lie to the mayor, board of aldermen, and board of common council of the city of Washington, to compel them "to make such regulations as they may deem proper, prescribing the manner of erecting private wharves within the limits of the city of Washington." *Kennedy v. Washington Corp.*, (1829) 3 Cranch (C. C.) 595, 14 Fed. Cas. No. 7,708

SEC. 3. [*Establishment of harbor lines in District of Columbia.*] That the harbor lines of the District of Columbia shall be determined by the Chief of Engineers, United States Army, and the Commissioners of the District of Columbia, subject to the approval of the Secretary of War. [*30 Stat. L. 1378.*]

[II. CAPITOL BUILDINGS AND GROUNDS.]

SEC. 1814. [*Old hall of House of Representatives.*] Suitable structures and railings shall be erected in the old hall of Representatives for the reception and protection of statuary, and the same shall be under the supervision and direction of the Chief of Engineers in charge of public buildings and grounds. And the President is authorized to invite all the States to provide and furnish statues, in marble or bronze, not exceeding two in number for each State, of deceased persons who have been citizens thereof, and illustrious for their historic renown or for distinguished civic or military services, such as each State may deem to be worthy of this national commemoration; and when so furnished, the same shall be placed in the old hall of the House of Representatives, in the Capitol of the United States, which is set apart or so much thereof as may be necessary, as a national statuary hall for the purpose herein indicated. [*R. S.*]

Act of July 2, 1864, ch. 210, 13 Stat. L. 347.

[SEC. 1.] [*Old Library room.*] * * * The rooms and all space now occupied by the Library of Congress in the Capitol building shall not, after the removal of said Library, be occupied, either permanently or temporarily,

for any purpose whatever until so ordered by Congress. * * * [29 Stat. L. 546.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Feb. 19, 1897, ch. 265.

Sec. 1815. [*Paintings, etc., not to be exhibited in Capitol.*] No statuary, painting, or other article, the property of an individual, shall hereafter be allowed to be exhibited in the rotunda or any other portion of the Capitol building. [R. S.]

Act of July 20, 1868, ch. 176, 15 Stat. L. 110.

works of art, the two provisions in the text immediately following.

See further as to exhibition of private

[SEC. 1.] [*Exhibition of private works of art or studios in Capitol.*] * * * And no work of art not the property of the United States shall be exhibited in the Capitol, nor shall any room in the Capitol be used for private studios or works of art, without permission from the Joint Committee on the Library, given in writing; and it shall be the duty of the Architect of the Capitol Extension to carry these provisions into effect. * * * [18 Stat. L. 376.]

This is from the Sundry Civil Appropriation Act of March 3, 1875, ch. 130.

[*Exhibition of private works of art, etc., in Capitol.*] No work of art or manufacture other than the property of the United States shall be exhibited in the National Statuary Hall, the Rotunda, or the corridors of the Capitol. * * * [20 Stat. L. 391.]

This is from the Sundry Civil Appropriation Act of March 3, 1879, ch. 182.

Sec. 1816. [*Repairs, etc., of Capitol.*] All improvements, alterations, additions, and repairs of the Capitol building shall hereafter be made by the direction and under the supervision of the Architect of the Capitol Extension, and the same shall be paid for by the Secretary of the Interior out of the appropriations for such extension, and from no other appropriation; and no furniture or carpets for either House shall hereafter be purchased without the written order of the chairman of the Committee to Audit and Control the Contingent Expenses of the Senate, for the Senate, or without the written order of the chairman of the Committee on Accounts of the House of Representatives, for the House. [R. S.]

Res. of April 16, 1862, No. 28, 12 Stat. L. 617; Act of March 30, 1867, ch. 24, 15 Stat. L. 13; Act of July 20, 1868, ch. 177, 15

Stat. L. 115; Act of March 3, 1869, ch. 121, 15 Stat. L. 283, 284; Act of March 3, 1871, ch. 114, 16 Stat. L. 500.

[SEC. 1.] [*Disbursement of appropriations for Capitol extension and improvement.*] * * * And hereafter the disbursing clerk of the Department of the Interior is hereby required to act as disbursing clerk of the architect of the Capitol, and to disburse all moneys appropriated for the United States Capitol extension and improvement of the grounds, and to receive an annual

compensation of one thousand dollars, to be paid out of said appropriation.
* * * [20 Stat. L. 391.]

This is from the Sundry Civil Appropriation Act of March 3, 1879, ch. 182.

[*Estimates for changes and improvements in Capitol grounds.*] * * *
For improving the Capitol grounds: * * * and hereafter all changes and improvements in the grounds, including approaches to the Capitol, shall be estimated for in detail, showing what modifications are proposed and the estimate cost of the same. * * * [22 Stat. L. 621.]

This is from the Sundry Civil Appropriation Act of May 3, 1883, ch. 143.

[*Architect of Capitol — change of designation to Superintendent of Capitol Building and Grounds.*] * * * Hereafter the office of Architect of the Capitol shall be designated as Superintendent of the Capitol Building and Grounds, and the Superintendent of the Capitol Building and Grounds shall hereafter exercise all the power and authority heretofore exercised by the Architect of the Capitol, and he shall be appointed by the President: *Provided*, That no change in the architectural features of the Capitol building or in the landscape features of the Capitol grounds shall be made except on plans to be approved by Congress. [32 Stat. L. 20.]

This is from the Urgent Deficiencies Appropriation Act of Feb. 14, 1902, ch. 17.

[SEC. 1.] [*Architect of Capitol — chief clerk to act in absence.*] * * * That hereafter in case of the absence or disability of the Architect of the United States Capitol, the chief clerk to the Architect shall have full power and authority to do and perform all the acts which the Architect of the United States Capitol might himself do, and in case of a vacancy the chief clerk shall perform the duties of the Architect until the vacancy shall be filled according to law. * * * [30 Stat. L. 672.]

This is from the Deficiencies Appropriation Act of July 7, 1898, ch. 571. Similar provisions are contained in the Acts of April 17, 1900, ch. 192, 31 Stat. L. 125; March 3, 1901, ch. 830, 31 Stat. L. 1000.

[SEC. 1.] [*Superintendence of Capitol.*] * * * That the Architect of the Capitol shall have the care and superintendence of the Capitol including lighting, and shall submit through the Secretary of the Interior, estimates thereof: *And provided further*, That all the duties relative to the Capitol building heretofore performed by the Commissioner of public buildings and grounds, shall hereafter be performed by the Architect of the Capitol, whose office shall be in the Capitol building. [19 Stat. L. 147.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Aug. 15, 1876, ch. 287.

stationery, instruments, books, and furniture which may be required for the performance of his duties. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1809. [*Record of property to be kept.*] He shall keep in his office a complete record of all the lands and other property connected with or belonging to the Washington Aqueduct and other public works under his charge, together with accurate plans and surveys of the public grounds and reservations in the District of Columbia. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1810. [*Authority, etc.*] He and his necessary assistants are empowered to use all lawful means for the discharge of their duties; and, particularly, he shall have full control over the Washington Aqueduct, to regulate the manner in which the authorities of the District of Columbia may tap the supply of water to the inhabitants thereof; and he shall stop the same whenever it is found to be no more than adequate to the wants of the public buildings and grounds. [R. S.]

Act of May 2, 1828, ch. 45, 4 Stat. L. 266; Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1811. [*Right of appeal to Secretary of War.*] His decision on all questions concerning the supply of water, as provided in the preceding section, shall be subject to appeal to the Secretary of War only. [R. S.]

Act of March 3, 1859, ch. 84, 11 Stat. L. 435.

Sec. 1812. [*Reports.*] The Chief of Engineers shall, as Superintendent of Public Buildings and Grounds, and as Superintendent of the Washington Aqueduct, annually submit the following reports to the Secretary of War in time to accompany the annual message of the President to Congress, namely:

First. A report of his operations for the preceding year, with an account of the manner in which all appropriations for public buildings and grounds have been applied, including a statement of the number of public lots sold, or remaining unsold each year, of the condition of the public buildings and grounds, and of the measures necessary to be taken for the care and preservation of all public property under his charge.

Second. A report of the condition, progress, repairs, casualties, and expenditures of the Washington Aqueduct and other public works under his charge. [R. S.]

Act of March 3, 1829, ch. 51, 4 Stat. L. 363; Act of Aug. 4, 1854, ch. 242, 10 Stat. L. 573; Act of March 3, 1859, ch. 84, 11 Stat. L. 435; Act of June 25, 1860, ch. 211, 12 Stat. L. 106.

Sec. 1813. [*Limitation on contracts of Board of Public Works.*] The Board of Public Works of said District are prohibited from incurring or contracting liabilities on behalf of the United States in the improvement of streets, avenues, and reservations beyond the amount of appropriations previously made by Congress, and from entering into any contract touching such improvements on behalf of the United States, except in pursuance of appropriations made by Congress. [R. S.]

Act of March 3, 1873, ch. 227, 17 Stat. L. 526.

R. S. secs. 1814-1817 are given *infra*, p. 687 *et seq.*

Sec. 1818. [*Improper appropriation of streets, etc.*] The Secretary of the Interior is directed to prevent the improper appropriation or occupation of any

of the public streets, avenues, squares, or reservations in the city of Washington, belonging to the United States, and to reclaim the same if unlawfully appropriated; and particularly to prevent the erection of any permanent building upon any property reserved to or for the use of the United States, unless plainly authorized by act of Congress, and to report to Congress at the commencement of each session his proceedings in the premises, together with a full statement of all such property, and how, and by what authority, the same is occupied or claimed. Nothing herein contained shall be construed to interfere with the temporary and proper occupation of any portion of such property, by lawful authority, for the legitimate purposes of the United States. [R. S.]

Res. of June 30, 1864, No. 56, 13 Stat. L. 412.

R. S. secs. 1819-1826 are given *infra*, p. 691 *et seq.*

The stretching of wires without authority across the Iowa reservation in the District of

Columbia is governed by this section and should be brought to the attention of the secretary of the interior. (1895) 21 Op. Atty.-Gen. 224.

Sec. 1827. [*Superintendent, etc., of Botanical Garden and greenhouses.*] There shall be a superintendent, assistants, and two additional laborers in the Botanical Garden and green-houses, who shall be under the direction of the Joint Committee on the Library. [R. S.]

Act of March 3, 1873, ch. 226, 17 Stat. L. 491.

[SEC. 1.] [*Propagation of trees, etc., in greenhouses and nursery.*] * * * BUILDINGS AND GROUNDS IN AND AROUND WASHINGTON * * * hereafter only such trees, shrubs, and plants shall be propagated at the greenhouses and nursery as are suitable for planting in the public reservations, to which purpose only the said productions of the greenhouses and nursery shall be applied. * * * [20 Stat. L. 220.]

This is from the Sundry Civil Appropriation Act of June 20, 1878, ch. 359.

Sec. 1828. [*Report of warden of penitentiary.* See PRISONS AND PRISONERS, *ante*, p. 30.]

R. S. secs. 1829-1834 are given *infra*, pp. 708, 709, 695.

Sec. 1835. [*Extra pay prohibited.*] No pay or compensation other than is fixed by this Title shall be allowed to any officer, employé, or laborer embraced within the provisions hereof. [R. S.]

Act of July 12, 1870, ch. 251, 16 Stat. L. 250.

[SEC. 1.] [*Use of buildings, etc., for public ceremonies forbidden.*] * * * That hereafter no public building, or the approaches thereto, other than the Capitol building and the White House, in the District of Columbia, shall be used or occupied in any manner whatever in connection with ceremonies attending the inauguration of President of the United States, or other public function, except as may hereafter be expressly authorized by law. * * * [32 Stat. L. 152.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 594.

SEC. 7. [*Prosecution and punishment for violation of act.*] That offenses against this act shall be triable before the police court of the District of Columbia, and shall be punishable by fine or imprisonment, or both, at the discretion of the judge of said court; the fine not to exceed one hundred dollars, the imprisonment not to exceed sixty days. But in the case of heinous offenses by reason of which public property shall have suffered damage to an amount exceeding one hundred dollars in value, said judge of the police court may commit or hold to bail the offender for trial before the supreme court of the District of Columbia, when the offense shall be punishable by imprisonment in the penitentiary for a period of not less than six months nor more than five years. [22 Stat. L. 127.]

SEC. 8. [*Duties of policemen, watchmen, etc.*] That it shall be the duty of all policemen and watchmen having authority to make arrests in the District of Columbia to be watchful for offenses against this act, and to arrest and bring before the proper tribunal those who shall offend against it under their observation, or of whose offenses they shall be advised by witnesses. [22 Stat. L. 127.]

SEC. 9. [*Capitol employees to aid in preserving order, etc.*] That it shall be the duty of all persons employed in the service of the government in the Capitol or on its grounds to prevent, as far as may be in their power, offenses against this act, and to aid the police, by information or otherwise, in securing the arrest and conviction of offenders. [22 Stat. L. 127.]

SEC. 10. [*Suspension of regulations in part for national celebrations.*] That in order to admit of the due observance within the Capitol Grounds of occasions of national interest becoming the cognizance and entertainment of Congress, the President of the Senate and the Speaker of the House of Representatives, acting concurrently, are hereby authorized to suspend for such proper occasions so much of the above prohibitions as would prevent the use of the roads and walks of the said grounds by processions or assemblages, and the use upon them of suitable decorations, music, addresses, and ceremonies: *Provided*, That responsible officers shall have been appointed, and arrangements determined, adequate, in the judgment of said President of the Senate and Speaker of the House of Representatives, for the maintenance of suitable order and decorum in the proceedings, and for guarding the Capitol and its grounds from injury. [22 Stat. L. 127.]

SEC. 11. [*When Capitol police commission may suspend regulations.*] That in the absence from Washington of either of the officers designated in the last section the authority therein given to suspend certain prohibitions of this act shall devolve upon the other, and in the absence from Washington of both it shall devolve upon the Capitol police commission. [22 Stat. L. 127.]

[SEC. 1.] [*Concerts on Capitol grounds.*] * * * That nothing in the Act to regulate the use of the Capitol grounds, approved July first, eighteen hundred and eighty-two, shall be construed to prohibit concerts on the Capitol grounds at times when neither House of Congress is sitting by any band in the service of the United States under the direction of the Architect of the Capitol. * * * [31 Stat. L. 613.]

[*Fuel delivery to Capitol.*] * * * Hereafter fuel shall be delivered to the two wings of the Capitol only during such hours and under such regulations as the Architect of the Capitol shall prescribe. * * * [31 Stat. L. 612.]

These provisions are from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

Sec. 1820. [*Protection of public buildings — arrest of offenders.*] The Sergeants-at-Arms of the Senate and of the House of Representatives are authorized to make such regulations as they may deem necessary for preserving the peace and securing the Capitol from defacement, and for the protection of the public property therein, and they shall have power to arrest and detain any person violating such regulations, until such person can be brought before the proper authorities for trial. [R. S.]

Act of March 30, 1867, ch. 20, 15 Stat. L. 12.

Sec. 1821. [*Capitol police.*] There shall be a Capitol police, the members of which shall be appointed by the Sergeants-at-Arms of the two Houses and the Architect of the Capitol Extension. There shall be a captain of the Capitol police and such other members with such rates of compensation, respectively, as may be appropriated for by Congress from year to year. [R. S.]

Act of March 2, 1867, ch. 167, 14 Stat. L. 466; Act of March 3, 1873, ch. 226, 17 Stat. L. 488.

By whom appointed. — Prior to 1867, the police of the Capitol were appointed by the commissioner of public buildings and grounds; then it was provided that the chief engineer of the army and the sergeants-at-arms of the two Houses should constitute the board; and by the Act of 1873 the "architect of the capitol extension" was added in place of the chief engineer of the army. *Allabach v. U. S.*, (1884) 19 Ct. Cl. 556.

Nature of appointment or removal necessary. — Neither a commission nor other technical form of appointment is necessary for the appointment of the capitol police, and their removal from office may be as informal as their appointment. *Thwing's Case*, (1880) 16 Ct. Cl. 13.

The tenure of the appointment or employment of the members of the capitol police not being fixed or limited by statute, they hold at the will of the officials vested with the power of appointing them; and they may be removed by their superiors by an authority, which, in such case, is incident to the power of appointment. *Thwing's Case*, (1880) 16 Ct. Cl. 13.

Rules and jurisdiction of police board. — The officers who by law constitute the appointing power have organized as a distinct board, the architect being the president. The rules adopted by this board embrace the entire supervision of the capitol and its grounds, whether Congress is in session or not. It is a police having jurisdiction of the grounds and capitol as the property of the United States, and which is simply incidentally protective, to each house of Congress, in the preservation of "order and decorum within the capitol and its grounds." *Allabach v. U. S.*, (1884) 19 Ct. Cl. 556.

Members absent from duty. — Where members of the capitol police remained absent from duty with no notice that they intended to return, and their names were stricken from the pay rolls, they must be regarded as having been removed even though subsequently restored to duty. *Thwing's Case*, (1880) 16 Ct. Cl. 13.

Police as employees of Congress. — Though the capitol police are borne on the pay rolls of Congress, yet being appointed by the capitol police board and being custodians of the building and grounds of the capitol, they have not been regarded as employees of the Senate and House in previous legislation. *Allabach v. U. S.*, (1884) 19 Ct. Cl. 556.

Sec. 1822. [*Number and pay.*] The Capitol police shall consist of the following members, to be paid at the following rates, respectively, per annum, on the order of the Sergeant-at-Arms of the Senate and the Sergeant-at-Arms of the House, or of either of them, namely:

One captain, at two thousand four hundred and one dollars and twenty cents; three lieutenants, at two thousand and seventy dollars each; twenty-seven privates, at one thousand eight hundred and twenty-one dollars and sixty cents each; and eight watchmen, at one thousand one hundred and fifty dollars each. [R. S.]

Act of March 30, 1867, ch. 20, 15 Stat. L. 11; Act of March 3, 1871, ch. 113, 16 Stat. L. 477.

Sec. 1823. [*Suspension of members of force.*] The captain of the Capitol police may suspend any member of the force, subject to the approval of the two Sergeants-at-Arms and of the Architect of the Capitol Extension. [R. S.]

Act of March 3, 1873, ch. 226, 17 Stat. L. 488.

[SEC. 1.] [*No pay during suspension.*] * * * That hereafter, whenever a member of the Capitol police or watch force is suspended from duty for cause, said policeman or watchman shall receive no compensation for the time of such suspension if he shall not be reinstated. * * * [18 Stat. L. 345.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1875, ch. 129. A similar provision without the word "hereafter" was contained in the Act of June 20, 1874, ch. 328, 18 Stat. L. 86.

Sec. 1824. [*Uniform.*] The Sergeant-at-Arms of the Senate and the Sergeant-at-Arms of the House of Representatives are directed to select and regulate the pattern for a uniform for the Capitol police and watchmen, and to furnish each member of the force with the necessary belts and arms, at a cost not to exceed twenty dollars per man, payable out of the contingent fund of the Senate and House of Representatives upon the certificate of the officers above named. [R. S.]

Act of March 30, 1867, ch. 20, 15 Stat. L. 11.

[SEC. 1.] [*Uniform to be worn when on duty.*] * * * And hereafter the officers, privates, and watchmen of the Capitol police shall, when on duty, wear the regulation uniform. * * * [31 Stat. L. 963.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1901, ch. 830. The same provision without the

word "hereafter" was contained in the Act of April 17, 1900, ch. 192, 31 Stat. L. 90.

Sec. 1825. [*At whose expense.*] The members of the Capitol police shall furnish, at their own expense, each his own uniform, which shall be in exact conformity to that required by regulation of the Sergeants-at-Arms. [R. S.]

Act of July 20, 1868, ch. 176, 15 Stat. L. 94.

An act to protect the public property, turf and grass of the Capitol Grounds from injury.

[Act of April 29, 1876, ch. 86, 19 Stat. L. 41.]

[*Duty to protect Capitol grounds and terraces.*] That it shall be the duty of the Capitol police hereafter to prevent any portion of the Capitol grounds and terraces from being used as play-grounds or otherwise, so far as may be necessary to protect the public property, turf and grass from destruction or injury. [19 Stat. L. 41.]

[SEC. 1.] [*Duty to police Capitol building and grounds.*] * * * And hereafter the Capitol police, under the direction of the Sergeants-at-Arms of the Senate and of the House of Representatives and of the Architect of the

Capitol, shall police the Capitol building and the Capitol grounds. * * *
[29 Stat. L. 143.]

This is from the Legislative, Executive, and Judicial Appropriation Act of May 28, 1896, ch. 252.

Sec. 1826. [*Supervision extended over Botanical Garden.*] The supervision of the Capitol police shall be extended over the Botanical Garden, and, until otherwise ordered, and especially during the period employed for rebuilding the fence surrounding the grounds, additional police force may be employed, if deemed necessary, the expense for which shall be defrayed from the contingent fund of the Senate and House of Representatives; but the additional number of policemen for this purpose shall not exceed three at any time. [R. S.]

Res. of July 15, 1870, No. 131, 16 Stat. L. 391.

Repeal in part. See following text.

[SEC. 1.] [*Repeal of provision for additional police force.*] * * *
That so much of the Joint Resolution approved July fifteenth, eighteen hundred and seventy, as authorizes the employment of additional police force is hereby repealed to take effect from and after the thirtieth day of June eighteen hundred and seventy-six. * * * [19 Stat. L. 144.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Aug. 15, 1876, ch. 287. That part of the resolution of July 15, 1870, No. 131, 16 Stat. L. 391, here referred to is incorporated in Revised Statutes as section 1826.

Sec. 1831. [*Work of fine arts.*] The Joint Committee on the Library, whenever, in their judgment, it is expedient, are authorized to accept any work of the fine arts, on behalf of Congress, which may be offered, and to assign the same such place in the Capitol as they may deem suitable, and shall have the supervision of all works of art that may be placed in the Capitol. [R. S.]

Act of June 10, 1872, ch. 415, 17 Stat. L. 362.

[III. CONSTRUCTION OF PUBLIC BUILDINGS AND WORKS.]

Sec. 355. [*Title to land to be purchased by the United States.*] No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the

appropriations made for the contingencies of the Departments respectively. [R. S.]

Res. of Sept. 11, 1841, No. 6, 5 Stat. L. 468. As to public contracts generally, see that title, *ante*, p. 90.

Purpose of sections.—These provisions, R. S. 355, 359–366, are too comprehensive and too specific to leave any doubt that Congress intended to gather into the department of justice, under the supervision and control of the attorney-general, all the litigation and all the law business in which the United States are interested and which previously had been scattered among different public officers, departments, and branches of the government, and to break up the practice of frequently employing unofficial attorneys in the public service. *Perry v. U. S.*, (1893) 28 Ct. Cl. 483.

Construed with Constitution.—The above provision demands that a transfer of jurisdiction in order to satisfy its requirements must be coextensive with that contemplated by article 1, section 8, of the Constitution. (1893) 20 Op. Att.-Gen. 611.

Validity of title necessary.—Property bargained for by the government is always to be taken and paid for, if the title should be pronounced valid by the attorney-general, and not otherwise. This Act enters into and forms part of every such contract. Where the attorney-general has officially refused to certify the titles, the head of the department through which the negotiation is conducted ought at once to declare the contract rescinded; and when he does so, the end of that contract has come. It can have no more force afterwards than if it had never been made. (1857) 9 Op. Att.-Gen. 100.

Title to lighthouse sites.—It is not competent to the lighthouse board to erect a lighthouse until title to the sites, though located under navigable waters of the United States, has been obtained for the government. (1879) 16 Op. Att.-Gen. 369.

Nature of state consent necessary.—The settled construction of the department of justice is that the “consent” of the legislature of a state to the purchase of lands therein by the United States, required by this section, must be free from any conditions or reservations inconsistent with the exercise by Congress of “exclusive legislation” thereover. (1903) 24 Op. Att.-Gen. 617.

Conditional and unconditional consents.—There is a clear distinction between Acts in which the reservation of jurisdiction is made an express condition of the consent, and an Act which unequivocally expresses the consent of the legislature and does not make any objectionable reservation which may contain an absolute and inseparable condition of the consent. In such a case there seems to be no good reason for holding that the reservation invalidated the entire Act. (1903) 24 Op. Att.-Gen. 617.

Methods of ceding jurisdiction.—Such cession may take place in two ways: indirectly, by an Act of the state legislature consenting to the purchase of the land by the United States; and directly, by an Act of the state

legislature granting the jurisdiction to the United States. (1871) 13 Op. Att.-Gen. 460.

Consent necessary for exclusive federal jurisdiction.—Congress cannot acquire or assert exclusive jurisdiction over any part of the territory of a state without the consent of the state legislature; and hence before such jurisdiction over a national cemetery can become vested in the United States the consent of the legislature of the state in which the cemetery is situated must be obtained. (1869) 13 Op. Att.-Gen. 131.

“Although the United States may well purchase and hold lands for public purposes within the territorial limits of a state, this does not of itself oust the jurisdiction of sovereignty of such state over the land so purchased. It remains until the state has relinquished its authority over the land, either expressly or by necessary implication.” *Arlington's Case*, (1879) 3 Hughes (U. S.) 36, 15 Fed. Cas. No. 8,191; *U. S. v. Cornell*, (1819) 2 Mason (U. S.) 60, 25 Fed. Cas. No. 14,867.

Complete consent cedes jurisdiction.—An Act of the legislature of a state which gives a complete and unequivocal consent to the purchase of land therein by the United States for the erection of needful public buildings, is such a cession of jurisdiction as is contemplated by this Act. (1858) 9 Op. Att.-Gen. 263.

If the consent of the legislature to the purchase is complete, and has been given, the Constitution carries with it the authority and jurisdiction required by this Act. This will authorize the expenditure of money upon the purchase. (1857) 9 Op. Att.-Gen. 129.

Jurisdiction is acquired by the United States by the consent of a state to the purchase of land within the same for constitutional uses of the Union. (1856) 7 Op. Att.-Gen. 628.

Sufficient cession of jurisdiction.—An Act ceding jurisdiction to the United States over certain lands in a state for public purposes and providing for the purchase and condemnation thereof satisfies the requirements of this section, and no further cession of jurisdiction is legally required. (1903) 24 Op. Att.-Gen. 617.

Insufficient consent.—Where the Act contains neither an assent to the purchase nor a grant of jurisdiction, but merely gives the consent of the state to the use of the land for a specific purpose, which consent is declared to be “as provided in the sixteenth clause of the eighth section of the first article of the Constitution of the United States, and in the Acts of Congress in such case made and provided,” the Act does meet the requirement of the law. (1871) 13 Op. Att.-Gen. 460.

Cession by constitutional convention.—A cession of jurisdiction over land purchased by the United States by a constitutional convention of a state is not a consent to the purchase by the legislature of the state. (1868) 12 Op. Att.-Gen. 428.

Consent obtained after purchase.—Where compensation has been paid for land thus acquired for a national cemetery, without having obtained the consent of the state legislature to the acquisition, the proper course to be taken is for the secretary of war to apply to such legislature for its consent. (1869) 13 Op. Atty.-Gen. 131.

Land purchased without state consent.—There is nothing in the Constitution which prohibits the United States purchasing land within a state without the consent of the state legislature; but when land is purchased by them in a state without such consent the United States cannot exercise "exclusive legislation" over the place. (1861) 10 Op. Atty.-Gen. 34.

Effect of refusal of consent.—If the state legislature, for any or no assigned reason, withhold its consent to a purchase of the site, then the government has tied its own hands. It may purchase and hold the land to be used; it may stand in the most pressing need of a fort, a lighthouse, or a post office, upon the spot, and yet it cannot spend a dollar of public money upon the site for the erection of the necessary building thereon. (1861) 10 Op. Atty.-Gen. 34.

Ascertainment of consent by attorney-general.—These provisions do not require the attorney-general to inquire into and report upon the fact in question whether the state in which the land lies has consented to the purchase. (1861) 10 Op. Atty.-Gen. 34.

Requirements to authorize payment for land.—To authorize payment for land appropriated for the purpose of a national cemetery the consent of the legislature of the state in which the land lies is not necessary; nor in such case is the opinion of the attorney-general as to the validity of the title required, though as a prudential measure for the security of the government it would seem to be highly expedient to obtain his opinion. (1869) 13 Op. Atty.-Gen. 131.

Payment of purchase money, and expenditures prior to consent.—This Act does not forbid the payment of the purchase money of any site or land for the purpose of erecting public buildings, before the consent of the legislature of the state is given to the purchase; but it does prohibit the expenditure of public money upon the improvement of the land, by the erection thereon of the needful public building, until that consent is given to the purchase. (1861) 10 Op. Atty.-Gen. 34; (1877) 15 Op. Atty.-Gen. 212.

Land donated.—Before any money could lawfully be expended upon land donated it would be necessary to obtain a cession of jurisdiction from the state. (1871) 13 Op. Atty.-Gen. 465.

Where land was donated to the United States for the purpose of a site for a certain public building, for the construction of which an appropriation was made, the consent of the legislature of the state to the grant is required by force of this section before any part of the appropriation can be lawfully expended in the erection of the building. (1880) 16 Op. Atty.-Gen. 414.

Acquisition of land by expropriation.—The

acquisition of land by the United States through the means of a statute process of expropriation is a "purchase" which if done in strict accordance with the form of the statute may be certified by the attorney-general as vesting a valid title in the United States. (1855) 7 Op. Atty.-Gen. 114.

Lands encumbered by outstanding liens.—The purpose of this provision was to protect the United States against the expenditure of money in the purchase or improvement of land to which it acquired a doubtful or invalid title. No money is to be paid until in the method designated the title is ascertained to be valid. But if the title be valid, the provisions do not forbid the purchase of lands encumbered by outstanding liens, and although in such case the payment of the purchase money should be withheld until the liens are removed, there is no reason why a contract of purchase may not be made and possession taken in pursuance thereof, with a stipulation that the purchase money shall be applied to the discharge of the incumbrances as they fall due or withheld until the vendor shall discharge them. (1862) 10 Op. Atty.-Gen. 353.

Extent of jurisdiction generally reserved.—In Acts of the different state legislatures giving consent to the purchase of lands by the United States, as well as in their Acts expressly ceding jurisdiction over such lands, it is usual to reserve to the state the right to serve on the land purchased its civil and criminal process, and a reservation of jurisdiction to that extent has always been regarded as consistent with the requirements of the provisions in this section. (1893) 20 Op. Atty.-Gen. 611.

The customary reservation by the state of the right to serve and execute its civil and criminal process in the place purchased has, however, always been permissible, the object of this reservation being, it is said, simply to prevent such place from becoming a sanctuary for fugitives from justice, and it operates merely as "an agreement of the new sovereign to permit its free exercise as *quoad hoc* his own process." (1903) 24 Op. Atty.-Gen. 617.

Purpose of reservation.—The reservation which has usually accompanied the consent of the states, that civil and criminal process of the state courts may be served in the places purchased, is not considered as interfering in any respect with the supremacy of the United States over them. *Ft. Leavenworth R. Co. v. Lowe*, (1885) 114 U. S. 525.

Retention of jurisdiction by state.—Where a state's consent to the purchase of land by the United States provides that the state shall forever retain concurrent jurisdiction over any such place to the extent that all legal and military process issued under the authority of the state may be executed anywhere on such place or in any building thereon or any part thereof, and that any offense against the laws of the state committed on such place may be tried and punished by any competent court or magistrate of the state, it does not satisfy the pro-

visions of this section. (1893) 20 Op. Atty.-Gen. 611.

Concurrent jurisdiction retained.—Phrases in legislative Acts of the states retaining concurrent jurisdiction for certain purposes do not impair the federal jurisdiction conferred by the Constitution. (1856) 7 Op. Atty.-Gen. 628.

The declared retention of jurisdiction is an express qualification of the assent and such a qualification as causes it to fail to satisfy the Act. (1856) 8 Op. Atty.-Gen. 102.

Effect of consent upon reservations, etc.—If the legislative Act of the state wherein the land lies amounts to a consent to the purchase of property by the United States, any exceptions, reservations, or qualifications contained in the Act are void. (1861) 10 Op. Atty.-Gen. 34.

Official duties of district attorney.—It is clearly within the official duties of the district attorney to prosecute cases for the judicial condemnation of the property taken by a United States commission and to perform all the professional law services connected therewith. *Perry v. U. S.*, (1893) 28 Ct. Cl. 483.

Where the title to land is to be vested in the United States, and the land to be acquired is to be used "as a public park or pleasure ground for the benefit of the people of the United States," it is the duty of the district attorney and his assistant to render professional services in regard to the acquisition or the protection of the same. *Cole v. U. S.*, (1893) 28 Ct. Cl. 501.

Services required of district attorneys.—Under the provisions of this section the district attorneys are to furnish any assistance or information in their power in relation to the titles of the public property lying in their respective districts. In construing the language here used according to its ordinary import it would not require any services of the district attorneys except in regard to any other than public property. *Weed v. U. S.*, (1897) 82 Fed. Rep. 414.

These provisions should be interpreted to mean proper legal assistance or such information as an attorney might possess without exercising great industry and expense in the procuring of evidence and abstracts of titles. *Weed v. U. S.*, (1897) 82 Fed. Rep. 414.

Compensation of district attorneys.—With regard to the compensation of district attorneys for services in examining titles of public property under this section, see *U. S. v. Johnson*, (1899) 173 U. S. 363; *U. S. v. Ady*, (C. C. A. 1896) 76 Fed. Rep. 359; *Weed v. U. S.*, (1897) 82 Fed. Rep. 414; *Weed v. U. S.*, (1894) 65 Fed. Rep. 399; *Ruhm v. U. S.*, (1895) 66 Fed. Rep. 531; *Perry v. U. S.*, (1893) 28 Ct. Cl. 483; *Cole v. U. S.*, (1893) 28 Ct. Cl. 501; (1887) 19 Op. Atty.-Gen. 63; (1868) 12 Op. Atty.-Gen. 416; (1866) 11 Op. Atty.-Gen. 433; (1855) 7 Op. Atty.-Gen. 46. See also notes under JUDICIAL OFFICERS, R. S. sec. 823, vol. 4, p. 89; R. S. sec. 771, vol. 4, p. 155; and notes under PUBLIC OFFICERS, R. S. secs. 1764, 1765, Act of June 20, 1874, *ante*, pp. 591 *et seq.*

Joint Resolution Relative to suspension of part of section three hundred and fifty-five of Revised Statutes, relative to erection of forts, fortifications, and so forth.

[*Res. No. 21, of April 11, 1898, 30 Stat. L. 737.*]

[*Erection of forts and fortifications in cases of emergency.*] That in case of emergency when, in the opinion of the President, the immediate erection of any temporary fort or fortification is deemed important and urgent, such temporary fort or fortification may be constructed upon the written consent of the owner of the land upon which such work is to be placed; and the requirements of section three hundred and fifty-five of the Revised Statutes shall not be applicable in such cases. [*30 Stat. L. 737.*]

Sec. 3734. [*Restrictions on commencement of new buildings.*] Before any new buildings for the use of the United States are commenced, the plans and full estimates therefor shall be prepared and approved by the Secretary of the Treasury, the Postmaster-General, and the Secretary of the Interior; and the cost of each building shall not exceed the amount of such estimate [*R. S.*]

Act of July 15, 1870, ch. 292, 16 Stat. L. 296.

An act to authorize the Secretary of the Treasury to suspend work upon the public buildings.

[*Act of June 23, 1874, ch. 476, 18 Stat. L. 275.*]

[*SEC. 1.*] [*Suspension of work on public buildings—unexpended balances of appropriations.* See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 902.]

This section authorizes and directs the secretary of the treasury to suspend work on public buildings not actually commenced, and

makes provision as to the unexpended balances of appropriations.

SEC. 2. [*Selection of site for public buildings — affidavits as to interest.*] That in the selection of a site for any public building not yet commenced, reference shall be had to the interest and convenience of the public, as well as to the best interests of the Government; and the Secretary of the Treasury shall have power, and it shall be his duty, to set aside any selection which in his opinion has not been made solely with reference thereto. No expenditure shall be made upon any building, a site for which has been selected, and work upon which has not been commenced, until such of the persons who acted as commissioners in selecting such site shall make and file with the Secretary of the Treasury an oath or affirmation that he is not at the time of making the affidavit, and was not at the date of making the selection of such site, directly or indirectly interested in the property selected for the same, and a similar affidavit shall be made and filed by each and every person hereafter appointed as such commissioner, before any site shall be finally adopted. In either case a failure on the part of any commissioner to make and file such an affidavit shall render the selection void. [18 Stat. L. 276.]

[SEC. 1.] [*Restriction upon contracts and expenditures for public buildings and sites therefor.*] * * * And hereafter no money shall be paid nor contracts made for payment for any site for a public building in excess of the amount specifically appropriated therefor; and no money shall be expended upon any public building on which work has not yet been actually begun until after drawings and specifications together with detailed estimates of the cost thereof shall have been made by the Supervising Architect of the Treasury Department, and said plans and estimates shall have been approved by the Secretary of the Treasury, Secretary of the Interior, and the Postmaster General; and all appropriations made for the construction of such building shall be expended within the limitations of the act authorizing the same or limiting the cost thereof; and no change of said plan involving an increase of expense exceeding ten per centum of the amount to which said building was limited shall be allowed or paid by any officer of the Government without the special authority of Congress. * * * [18 Stat. L. 395.]

This is from the Sundry Civil Appropriation Act of March 3, 1875, ch. 130.
Appropriation. — Authority to purchase

site not an appropriation. See ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2 p. 892.

[SEC. 1.] [*Approval of plans, before site selected, and in excess of appropriation forbidden.*] * * * That hereafter no plan shall be approved by the Secretary of the Treasury for any public building authorized by Congress to be erected, until after the site therefor shall have been finally selected; and he shall not authorize or approve of any plan for any such building which shall involve a greater expenditure in the completion of such building, including heating apparatus, elevators, and approaches thereto, than the amount that shall remain of the sum specified in the law authorizing the erection of such building excluding cost of site. [25 Stat. L. 941.]

[*Sites for buildings — commissions on purchase forbidden — mode of payment.*] That hereafter commissions shall not be paid for disbursements on account of sites for public buildings; nor on account of construction of public buildings except for moneys actually handled and paid out by disbursing agents; and payments for sites for public buildings under the control of the Treasury Department shall be made by the Treasury Department, at Washington, District of Columbia, by drafts or checks payable to the grantors of such sites or their legal representatives. [25 Stat. L. 941.]

[*Legal services — abstracts of title.*] That hereafter all legal services connected with the procurement of titles to site for public buildings, other than for life saving stations at pier-head lights, shall be rendered by United States district attorneys: *Provided further*, That hereafter, in the procurement of sites for such public buildings, it shall be the duty of the Attorney-General to require of the grantors in each case to furnish, free of all expenses to the Government, all requisite abstracts, official certifications, and evidences of title that the Attorney-General may deem necessary. * * * [25 Stat. L. 941.]

The foregoing paragraphs are from the Sundry Civil Appropriation Act of March 2, 1889, ch. 411.

[SEC. 1.] [*Purchase or condemnation of sites authorized.*] * * * And the Secretary of the Treasury is authorized to acquire, by private purchase or by condemnation, the necessary lands for public buildings and light-houses to be constructed, and for which money is appropriated, including all public building sites authorized to be acquired under any of the acts of the first session of the Forty-seventh Congress; and there may be expended by the Secretary of the Treasury, from the several amounts appropriated for the construction of public buildings, the expenses incident to the procuring of sites for said buildings, respectively. * * * [22 Stat. L. 605.]

This is from the Sundry Civil Appropriation Act of March 3, 1883, ch. 143.

An act to authorize condemnation of land for sites of public buildings, and for other purposes.

[*Act of Aug. 1, 1888, ch. 728, 25 Stat. L. 357.*]

[SEC. 1.] [*Condemnation for building sites — jurisdiction of proceedings.*] That in every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so. And the United States circuit or district courts of the district wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice. [25 Stat. L. 357.]

"In addition to this Act the following others appear to be in force authorizing or regulating the taking of private property for public use:

"R. S. secs. 4870-4872, authorizing the sec-

retary of war to purchase land for national cemeteries, or obtain the same by appraisal and payment, after application to the proper circuit or district court.

"1875, March 3, ch. 130, authorizing the

secretary of the treasury to acquire, by donation or purchase, the right to occupy sites for life-saving stations, etc.

"1883, March 3, ch. 143, authorizing the secretary of the treasury to acquire land for public buildings and lighthouses by private purchase or condemnation, and to defray the expenses incident to the procuring of sites from the appropriations for the construction of the buildings. (See 18 Op. Atty-Gen. 174, 484.)

"1888, April 24, ch. 194, authorizing the secretary of war to cause proceedings to be instituted for the condemnation of any land, right of way, or material required for the improvement of rivers and harbors, or in his discretion to purchase the same or accept donations of lands or materials.

"1889, March 2, ch. 370, prohibiting the commissioners of the District of Columbia from employing agents in making purchases of school sites, etc., in certain cases.

"1890, Aug. 6, ch. 724, extending to the commissioners of the District of Columbia the powers conferred on the officers of the United States by the Act in the text, and regulating the preparation of plans, etc., for the buildings.

"1890, Aug. 18, ch. 797, authorizing the secretary of war to cause proceedings to be instituted for the condemnation of any land or right pertaining thereto, for fortifications and coast defenses, or to purchase the same or accept donations of such lands or rights. (See 45 Fed. Rep. 546.)

"1890, Aug. 30, ch. 837, secs. 2, 3, which, after providing for the acquisition of land by purchase or condemnation for the purposes of the government printing office, directs that hereafter the same provisions shall apply to all cases of the taking of property in the District of Columbia for public use.

"Previous to the passage of the last-named Act the proceedings in the district in taking private property for public use had not been uniform. In increasing the water supply, for instance, three appraisers were to be appointed, but the owner, if dissatisfied with their valuation, might apply to the Court of Claims (22 Stat. L. 168, 169); while on the other hand the proceedings in the acquisition of land for the library of Congress were to be conducted (24 Stat. L. 12, 13), "in the manner provided with reference to the taking of land for highways in the District of Columbia," the provisions as to which are contained in R. S. of D. C., secs. 252-265." *Compilers' note, 1 Supp. R. S. 601.*

The right of eminent domain does not rest on a statute or on a constitutional enactment. It is an attribute of sovereignty possessed by the general government as sovereign to enable it to perform its proper functions. It is an authority essential to its independent existence and perpetuity. *Mississippi, etc., Boom Co. v. Patterson*, (1878) 98 U. S. 406; *Kohl v. U. S.*, (1875) 91 U. S. 367; *U. S. v. Jones*, (1883) 109 U. S. 513.

Constitutionality.—It is wholly competent for Congress to give to the secretary of the treasury the necessary authority to appropriate for governmental uses the land of

an individual, he being unwilling to part with his land. *U. S. v. Rauhers*, (1895) 70 Fed. Rep. 748.

This Act is a constitutional exercise of the power of Congress. *Chappell v. U. S.*, (1896) 160 U. S. 499.

General construction.—In this Act Congress has empowered certain public officials who may thereto be specially authorized to put in operation the right of eminent domain. It requires this right to be exercised by judicial proceedings in the District or Circuit Courts of the United States. These courts in directing and conducting these proceedings, mindful of their constitutional obligations, must see to it that the process of condemnation be not awarded unless full compensation be provided. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

Strict construction of statute.—A fundamental principle of law controlling all matters of this character is that every statute which undertakes to appropriate in any manner the property of private persons for public use must be strictly construed. One of the greatest aims of government is to secure to each citizen the enjoyment of his estate. On the other hand, in cases of public necessity, the right of the individual must yield to the right and demand of the public; but since that demand is in derogation of private right it must be closely scrutinized and the expression of legislative purpose in which it is conveyed must be strictly construed. *U. S. v. Rauhers*, (1895) 70 Fed. Rep. 748.

Construed with Constitution.—The Act of 1888 must be read *in pari materia* with the Constitution. The term "condemnation" used in that Act must be construed to mean condemnation with just compensation. The machinery of the courts is employed to ascertain and secure such compensation. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

Construed with other Acts.—These two Acts (Aug. 1, 1888, ch. 728, and Aug. 18, 1890, ch. 797) are *in pari materia*. The first Act gives jurisdiction to the courts of the United States only and prescribes that the form of the proceedings shall, as near as may be, conform to the practice, pleading, form, and mode of procedure in like causes in the state courts. The second Act authorizes proceedings in any court of competent jurisdiction to be presented in accordance with the laws relating to the condemnation of property of the states wherein the proceeding may be instituted. The government may proceed under either Act in its own discretion. When proceedings are taken under either of these Acts, strict compliance must be had with all the provisions of law made for the protection of the landowner, or the proceedings are ineffectual; and these proceedings must show affirmatively that the requirements of the law have been fulfilled. *Chappell v. U. S.*, (C. C. A. 1897) 81 Fed. Rep. 764.

Public use only.—Article 5 of the amendments to the Constitution of the United States prohibits the taking of private property for public use without just compensation. If the use for which it is proposed to

take such property is not a public use, or if the owner of the property is not to be paid an equivalent, to be lawfully ascertained, for its loss, then no proceedings for condemnation can or should be allowed. *In re Manderson*, (C. C. A. 1892) 51 Fed. Rep. 501.

Authorization of officer necessary.—The authority to condemn is made dependent upon the existence of authority to procure, and before the power of eminent domain can be exercised by any officer of the government its delegation to him must plainly appear, and may not be deduced from ambiguous language by doubtful inference. *U. S. v. Certain Tract of Land*, (1894) 70 Fed. Rep. 940. See also *U. S. v. Rauers*, (1895) 70 Fed. Rep. 748; *U. S. v. Certain Tract of Land*, (1895) 67 Fed. Rep. 869; *In re Manderson*, (C. C. A. 1892) 51 Fed. Rep. 501, (1892) 48 Fed. Rep. 896.

The secretary of the treasury is not by the terms of the statute authorized to procure real estate, and he must be expressly so authorized before he is authorized to proceed by condemnation in his discretion. *U. S. v. Rauers*, (1895) 70 Fed. Rep. 748.

Judicial control of secretary's discretion.—This Act gives to the secretary of the treasury the right to determine whether the acquisition of land by condemnation by a judicial process be necessary or advantageous. Whatever may be his motive with that the court can have no concern. Nor can it control his discretion. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

Purchase of land not authorized.—This Act confers no power on any one to negotiate for the purchase of land. It only provides that where an officer is authorized otherwise to purchase, he may purchase by condemnation. The duty of the attorney-general under the Act is confined to instituting and supervising the judicial proceeding for condemnation. (1890) 19 Op. Atty.-Gen. 673.

Proceedings in whose name.—Proceedings for the condemnation of an interest in land for the use and benefit of the United States having been commenced in the name of the secretary of the treasury, it is rightly ordered to be amended so as to make the United States the formal as they were the real petitioner. *Chappell v. U. S.*, (1896) 160 U. S. 499.

Discretion of attorney-general.—The Act of Congress does not authorize the secretary of the treasury, nor any other officer of the government desiring such proceedings to be instituted, to instruct the attorney-general in what court or in what mode to conduct the proceedings. These are left wholly to his discretion. No action on the part of the secretary of war after having made the application provided by law, and no limitation of authority to another, no instruction of another, can affect the discretion of the attorney-general in carrying out the purposes of the application and in condemning the land. *Chappell v. U. S.*, (C. C. A. 1897) 81 Fed. Rep. 764.

Personal attention of attorney-general.—It was, of course, not contemplated by Con-

gress that the attorney-general should be away from the national capital in order to give his personal attention to the conduct of such proceedings. *U. S. v. Johnson*, (1899) 173 U. S. 363.

Necessary requisites for jurisdiction.—Under this Act, in order to put the machinery of the District or Circuit Court of the United States in motion, it must appear that application for the commencement of the proceedings is made by the secretary of the treasury or some other officer of the United States; that such officer has been authorized to procure real estate for some public use; and that in his opinion it is necessary or advantageous to the government to acquire such real estate for the United States, by condemnation under judicial process. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

Jurisdiction in courts, not judges.—Under the Act the courts of the United States, the District and Circuit Courts, not the judges, have jurisdiction. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

Jurisdiction of state and federal courts.—By virtue of this Act the national court acquired exclusive jurisdiction of a limited and statutory nature, in which the issues are confined to those matters which are material to and directly connected with the judgment sought to be rendered therein, and a state court has no jurisdiction over such condemnation proceedings—certainly not as to the right of condemnation of the land involved and the awarding of proper damages therefor; but it does not necessarily follow by the commencement of such proceedings in the national court that the title to the land if in dispute must be tried therein, and cannot be tried, heard, and determined in any other court. This is a matter over which the state courts have jurisdiction, especially where the parties adversely claiming title to the land are all residents of the state wherein it is located; and the validity of the judgment or decree in a state court with regard to the title to such land cannot be questioned in a proceeding in a national court under this section. *U. S. v. Eisenbeis*, (C. C. A. 1901) 112 Fed. Rep. 190.

Petition and submission of question.—The representation must be made upon the petition of a duly authorized person to a court of record, and then follow notice of such petition to the landowner, a summary hearing by the court, the submission of the question, sooner or later, always to a jury. When that question is to be submitted it must be submitted in the name of the United States. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

Compensation, when necessary.—The property of a citizen cannot be taken for a public use without just compensation. To protect him, to secure him in his right, the condemnation by the action of this court must be accompanied by the provision for his compensation. As the judgement binds him in the taking of his land, so it must bind the United States to pay him for it. But this only becomes necessary and proper after the

officer of the United States asking for the exercise of the sovereign right of eminent domain has satisfied the court that he is authorized to make his application. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

These laws were enacted subject to the constitutional restriction that private property should not be taken for public use without compensation. Congress intended that

compensation should follow the condemnation proceedings in every case, and the omission to make an appropriation in advance to pay the damages assessed for taking the property constitutes no bar to such proceedings, for the faith of the government is always a guaranty for that payment. *In re Manderson*, (C. C. A. 1892) 51 Fed. Rep. 501.

SEC. 2. [*Practice and procedure.*] The practice, pleadings, forms and modes of proceedings in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding. [*25 Stat. L. 357.*]

Purpose of section.—It was undoubtedly the purpose of the Act of Aug. 1, 1888, to extend to condemnation suits brought by the government the provisions of the Act of June 1, 1872 (now section 914, R. S.), which prescribes, in effect, that in civil actions at law the Circuit and District Courts of the United States are to conform their practice and procedure as near as may be to that of the state courts in like causes in the state wherein such Circuit and District Courts are held. If any suits had been governed by these provisions the Act of Aug. 1, 1888, was wholly unnecessary legislation. The Act explicitly extends the provisions of the former Act to government condemnation suits and includes them in the category of causes in which the Circuit and District Courts of the United States are to conform their practice as near as may be to that prescribed for the state courts by the laws of the state in which the suit is brought. *Carlisle v. Cooper*, (C. C. A. 1894) 64 Fed. Rep. 472.

Nature of conformity to state laws necessary.—The language is intended to devolve upon the federal courts the power to reject any subordinate provisions in state statutes regulating practice, which in their judgment would unwisely encumber the administration of the law, or tend to defeat the ends of justice in the federal tribunal. Subject to this reservation of discretionary power, the federal courts, in condemnation suits, are to conform, by adopting the practice and procedure which the state courts would follow in a similar suit. This they cannot do without certainty unless the rule of conformity is found in the practice and procedure in similar causes generally, and not in that which may obtain abnormally, or in similar causes exceptionally. *In re Secretary of Treasury*, (1891) 45 Fed. Rep. 396.

The direction in the Act of Congress that the practice, pleadings, forms, and modes of proceeding in cases arising under it "shall conform as near as may be to the practice, pleadings, forms, and proceedings existing at the time in like causes in the courts of record of the state," must "give way whenever to adopt the state practice would be inconsistent with the terms, defeat the purpose, or impair the effect of any legislation

of Congress." *Chappell v. U. S.*, (1896) 160 U. S. 499. See also *Luxton v. North River Bridge Co.*, (1893) 147 U. S. 337.

By other Acts.—Irrespective of the terms of the Federal Condemnation Act, conformity of procedure is required, as in all suits at common law, by section 914 of the Revised Statutes of the United States. *In re Secretary of Treasury*, (1891) 45 Fed. Rep. 396.

"In like causes," that is to say in analogous causes. *In re Rugheimer*, (1888) 36 Fed. Rep. 369.

"As near as may be," that is to say as near as may be practicable, not as near as may be possible, with discretion in the judge of construing and deciding how far to go. *Chappell v. U. S.*, (C. C. A. 1897) 81 Fed. Rep. 764; *In re Rugheimer*, (1888) 36 Fed. Rep. 369, *citing Indianapolis, etc., R. Co. v. Horst*, (1876) 93 U. S. 301; *Phelps v. Oaks*, (1886) 117 U. S. 239.

At common law.—A proceeding to condemn land for public use is a suit at common law. *Kohl v. U. S.*, (1875) 91 U. S. 367.

No state rule of damages applicable.—Where lands within a state are sought to be condemned under the provisions of this Act for a specific purpose, and the laws of the state provide no rule of damages applicable to a condemnation for such purpose, the determination of what is just compensation must be made under the principles of the common law. *High Bridge Lumber Co. v. U. S.*, (C. C. A. 1895) 69 Fed. Rep. 320.

Necessary allegations.—It is a well-settled principle that when the exercise of a special authority, delegated by statute to a particular person or to a special tribunal, is dependent upon conditions precedent, all preliminaries which show fulfilment of such conditions, and which confer upon such person or tribunal power to act, must clearly appear upon the face of the proceedings. The proper practice is to state affirmatively and with certainty all facts upon which, in such case, jurisdiction depends. Intendment and presumption should not be resorted to for justification of any judicial proceedings in derogation of private rights. *In re Montgomery*, (1892) 48 Fed. Rep. 896.

It was held by the court in *U. S. v. Raders*, (1895) 70 Fed. Rep. 748, following

In re Montgomery, (1892) 48 Fed. Rep. 896, affirmed (C. C. A. 1892) 51 Fed. Rep. 501, that "the petition for condemnation must affirmatively show that the officer is authorized by Congress to acquire lands and that in his opinion it is necessary or advantageous to proceed by judicial process, and these facts cannot be inferred."

Trial by jury.—Congress has not itself provided any peculiar mode of trial in proceedings for the condemnation of lands for public uses. The direction in this Act that such proceedings shall conform, "as near as may be" to those "in the courts of record of the state," is not to be construed as creating an exception to the general rule of trial by an ordinary jury in a court of record, and as requiring, by way either of preliminary or of substitute, a trial by a different jury, not in the court of record, nor in the presence of any judge. Such a construction would unnecessarily and unwisely encumber the administration of justice in the courts of the United States. *Chappell v. U. S.*, (1896) 160 U. S. 499. See also *U. S. v. Honolulu Plantation Co.*, (C. C. A. 1903) 122

Fed. Rep. 586; *Postal Tel. Cable Co. v. Southern R. Co.*, (1903) 122 Fed. Rep. 162.

Costs and damages.—In the absence of legislation by Congress authorizing costs against the government they cannot be imposed in any suit to which it is a party, and this Act was not intended as a consent by Congress to waive the immunity of the government from judgments for damages or costs; nor does R. S. section 914 permit them. *Carlisle v. Cooper*, (C. C. A. 1894) 64 Fed. Rep. 472.

Provisions of Maryland law.—The provision of a state that a petition in the County Court shall be verified by affidavit of the agent of the United States is inapplicable to a petition presented to a court of the United States by the officer designated in the Act of Congress. *Chappell v. U. S.*, (1896) 160 U. S. 499.

The provision requiring a sheriff's jury to reduce to writing and to return to the clerk of the court the testimony taken before them, has no application to a trial had and evidence taken before the court itself. *Chappell v. U. S.*, (1896) 160 U. S. 499.

[SEC. 1.] [*Condemnation for National Home of Disabled Volunteers.*]

* * * That the provisions of the Act entitled "An Act to authorize condemnation of land for sites of public buildings, and for other purposes," approved August first, eighteen hundred and eighty-eight, shall be construed to apply to the Board of Managers of the National Home for Disabled Volunteer Soldiers. * * * [30 Stat. L. 121.]

This is from the Deficiencies Appropriation Act of July 19, 1897, ch. 9.

[*Condemnation of sites for fortifications and coast defenses.*] * * *

Hereafter the Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement, by condemnation, of any land, or right pertaining thereto, needed for the site, location construction or prosecution of works for fortifications and coast defenses, such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such lands or rights pertaining thereto shall fix a price for the same which, in the opinion of the Secretary of War shall be reasonable, he may purchase the same at such price without further delay: *Provided, further*, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of lands or rights pertaining thereto required for the above-mentioned purposes: *And provided further*, That nothing herein contained shall be construed to authorize an expenditure, or to involve the government in any contract or contracts for the future payment of money, in excess of the sums appropriated therefor. * * * [26 Stat. L. 316.]

This is from the Act of Aug. 18, 1890, ch. 797, "An act making appropriations for fortifications and other works of defense,

for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes."

What authority granted.—Any officer of the government who is authorized to procure real estate for a public purpose is authorized to acquire the same for the United States by condemnation under judicial process. This

authority is specially vested in the secretary of war by this Act, of which the courts take cognizance. *Chappell v. U. S.*, (C. C. A. 1897) 81 Fed. Rep. 764.

SEC. 2. [*Purchase or condemnation of site for Government Printing Office—board constituted.*] That to provide accommodation for the Government Printing Office, and the construction of the needed storage and distributing warehouses in connection therewith, the Secretary of the Treasury, the Public Printer, and the Architect of the Capitol, acting as a board, be, and they are hereby, empowered and instructed to acquire, either by purchase or by condemnation proceedings, as hereinafter provided, the land necessary, in their opinion, for the purposes aforesaid, and for the purposes stated, the sum of two hundred and fifty thousand dollars, or so much thereof as shall be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated. * * * [26 Stat. L. 412.]

This and section 3 following are from the Sundry Civil Appropriation Act of Aug. 30, 1890, ch. 837. While these sections in terms relate to the purchase or condemnation of the site for a government printing office, by a provision at the close of section 3 the

same procedure is directed in all similar cases in the future in the District of Columbia, and though the particular appropriation for the government printing office was suspended by Act of March 3, 1891, ch. 542, 26 Stat. L. 989, the sections are here retained.

SEC. 3. [*Procedure—application of Act to future cases.*] That in the event it shall be necessary, in order to carry out the purpose of the foregoing section, for the board, as above constituted, to acquire land, said board is empowered and directed to acquire the same by negotiation, where any such land may and can be so acquired and title secured at a price not above a fair relative value as to other lands which have been sold in the immediate vicinity; or if the said board hereby created shall be unable to purchase said land by agreement with any one or more of the respective owners at a reasonable price within sixty days after the passage of this act they are authorized and directed to make application to the supreme court of the District of Columbia, at any general or special term thereof, by petition for the condemnation of such land not so purchased, and for the ascertainment of its value. Such petition shall contain a particular description of the property not so purchased, and selected for the purpose aforesaid, with the name of the owner or owners thereof and their residences, so far as the same may be ascertained, together with a plan of the land proposed to be taken; and thereupon the said court is authorized and required to cite all such owners and all other persons interested to appear in said court at a time to be fixed by such court, on reasonable notice, to answer the said petition; and if it shall appear to the court that there are any owners or other persons interested who are under disability the court shall give public notice of the time at which the said court will proceed with the matter of condemnation; and at such time if it shall appear that there are any persons under disability either who have appeared or who have not appeared, the court shall appoint guardians ad litem for each such persons, and the court shall thereupon proceed to appoint three capable and disinterested commissioners to appraise the value of the respective interests of all persons concerned in such lands, under such regulations as to notice and hearing as to the court shall seem meet. Such commissioners shall thereupon, after being duly sworn for the proper performance of their duties, examine the premises and hear the persons in interest who may

appear before them, and return their appraisal of the value of the interests of all persons, respectively, in such land; and when such report shall have been confirmed by the court the President of the United States shall, if he think the public interest requires it, cause payment to be made to the respective persons entitled according to the judgment of the court, and in case any of such persons are under disability, or can not be found, or neglect to receive payment, the money to be paid to any of them shall be deposited in the Treasury to their credit, unless there shall be some person lawfully authorized to receive the same under the direction of the court, and when such payments are so made, or the amounts belonging to persons to whom payment shall not be made are so deposited, the said lands shall be deemed to be condemned and taken by the United States for the public use. And hereafter, in all cases of the taking of property in the District of Columbia for public use, whether herein, heretofore, or hereafter authorized, the foregoing provisions, as it respects the application by the proper officer to the supreme court of the District of Columbia and the proceedings therein shall be as in the foregoing provisions declared. [26 Stat. L. 412.]

See note to section 2, *supra*.

The object of these provisions would appear to have been to make a change only in

the persons who should assess the compensation, not in the rule of assessment. *Bauman v. Ross*, (1897) 167 U. S. 548.

An act authorizing the Secretary of the Treasury to obtain plans and specifications for public buildings to be erected under the supervision of the Treasury Department, and providing for local supervision of the construction of the same.

[Act of Feb. 20, 1893, ch. 146, 27 Stat. L. 468.]

[Plans for public buildings — obtained by competition — supervision of work.] That the Secretary of the Treasury be, and he is hereby, authorized in his discretion to obtain plans, drawings, and specifications for the erection of public buildings for the United States, authorized by Congress to be erected under the supervision and direction of the Secretary of the Treasury and the local supervision of the construction thereof by competition among architects under such conditions as he may prescribe and to make payment for the services of the architect whose plan may be selected out of the appropriations for the respective buildings: *Provided*, That not less than five architects shall be invited by the said Secretary to compete for the furnishing of such plans and specifications and the supervision of such construction: *And provided further*, That the general supervision of the work shall continue in the office of the Supervising Architect of the Treasury Department, the Supervising Architect to be the representative of the Government in all matters connected with the erection and completion of such buildings, the receipt of proposals, the award of contracts therefor, and the disbursement of moneys thereunder, and perform all the duties that now pertain to his office, except the preparation of drawings and specifications for such buildings and the local supervision of the construction thereof, the said drawings and specifications however, to be subject at all times to modification and change relating to plan or arrangement of building and selection of material therefor as may be directed by the Secretary of the Treasury. [27 Stat. L. 468.]

[Sec. 1.] [Barracks and quarters for artillery for seacoast defense.]

* * * Military posts: For the construction of buildings at, and the en-

largement of, such military posts as in the judgment of the Secretary of War may be necessary, and for the erection of barracks and quarters for the artillery in connection with the adopted project for seacoast defense, and for the purchase of suitable building sites for said barracks and quarters, * * * dollars: *Provided*, That for the erection of barracks and quarters for artillery in connection with the project adopted for seacoast defense there shall not hereafter be expended at any one point more than one thousand two hundred dollars per man for each man required for one relief to man the guns at the post up to eighty-three men, the present permanent strength of a battery, enlisted and commissioned, and for each man required beyond this number six hundred dollars per man, from any appropriation made by Congress, unless special authority of Congress be granted for a greater expenditure; * * * [31 Stat. L. 624.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

The Appropriation Act of July 1, 1898, ch. 546, provided as follows:

[SEC. 1.] * * * "That for the erection of barracks and quarters for artillery in connection with the project adopted for seacoast defense there shall not hereafter be

expended at any one point more than sixty thousand dollars for a one-battery post and twenty thousand dollars additional for each additional battery, from any appropriation made by Congress, unless special authority of Congress be granted for a greater expenditure." * * * [30 Stat. L. 629.]

[SEC. 1.] [*Electric wiring — payment from construction funds.*] * * * The Secretary of the Treasury is hereby directed, if in his judgment such work should be performed, to pay for the wiring for electric lighting of all buildings in process of erection or hereafter to be erected under the control of the Treasury Department from the construction funds of such buildings. * * * [28 Stat. L. 910.]

This is from the Sundry Civil Appropriation Act of March 2, 1895, ch. 189.

[SEC. 1.] [*Electric lighting and engineering plants — payments from construction funds.*] * * * Hereafter, the Secretary of the Treasury is authorized, whenever in his judgment such work should be performed, to pay for the installation of engineering and electric-light plants in all buildings in process of erection, or hereafter to be erected, under the control of the Treasury Department, from the construction funds of such buildings. * * * [31 Stat. L. 591.]

This is from the Sundry Civil Appropriation Act of June 6, 1900, ch. 791.

[SEC. 1.] [*Draftsmen, etc., in supervising architect's office — how paid — report.*] * * * And the services of skilled draftsmen, civil engineers, computers, accountants, assistants to the photographer, copyists, and such other services as the Secretary of the Treasury may deem necessary and specially order, may be employed in the Office of the Supervising Architect exclusively to carry into effect the various appropriations for public buildings, to be paid for from and equitably charged against such appropriations: *Provided*, * * * that the Secretary of the Treasury shall each year in the annual estimates report to Congress the number of persons so employed and the amount paid to each. * * * [32 Stat. L. 135.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 28, 1902, ch. 594. Similar provisions have occurred annually since 1882. See 22 Stat. L. 226, 22 Stat. L. 539, 23 Stat. L. 168, 23

Stat. L. 398, 24 Stat. L. 181, 24 Stat. L. 603, 604, 25 Stat. L. 265, 266, 715, 26 Stat. L. 238, 918, 27 Stat. L. 193, 685, 28 Stat. L. 172, 775, 29 Stat. L. 150, 549, 550, 30 Stat. L. 287, 288, 858, 31 Stat. L. 100, 975.

[SEC. 1.] [*Compensation of public building employees limited.*] * * * Nor shall there hereafter be paid more than six dollars per day to any person employed outside of the District of Columbia, in any capacity whatever, whose compensation is paid from appropriations for public buildings in course of construction, but the Secretary of the Treasury may, in his discretion, authorize payment in cities of eighty thousand or more inhabitants of a sum not exceeding eight dollars per day for such purposes. * * * [27 Stat. L. 349.]

This is from the Sundry Civil Appropriation Act of Aug. 5, 1892, ch. 380.

[IV. MISCELLANEOUS PROVISIONS RELATING TO PUBLIC BUILDINGS, PROPERTY, AND GROUNDS.]

Sec. 1829. [*Furniture for President's house.*] All furniture purchased for the use of the President's House shall be, as far as practicable, of domestic manufacture. [R. S.]

Act of May 22, 1826, ch. 154, 4 Stat. L. 194.

[*Furniture for public buildings.*] * * * FURNITURE AND REPAIRS OF SAME FOR PUBLIC BUILDINGS: For furniture and repairs of same, and carpets for all public buildings, marine hospitals included, under the control of the Treasury Department and for furniture, carpets, chandeliers and gas fixtures for new buildings, exclusive of personal services, except for work done by contract, * * * dollars. And all furniture now owned by the United States in other buildings shall be used, as far as practicable, whether it corresponds with the present regulation plan for furniture or not. * * * [31 Stat. L. 282.]

This is from the Deficiencies Appropriation Act of June 6, 1900, ch. 785. This is repeated in the later Appropriation Acts of

June 6, 1900, ch. 791, 31 Stat. L. 609, March 3, 1901, ch. 853, 31 Stat. L. 1154.

Sec. 1830. [*Ailantus trees prohibited.*] No more ailantus trees shall be purchased for or planted in the public grounds. [R. S.]

Act of March 3, 1853, ch. 97, 10 Stat. L. 207.

Sec. 1832. [*Annual statement of public property.*] It shall be the duty of the officer or officers having in charge the property of the United States in and about the Capitol, the President's House, and the Botanical Garden, to furnish an annual statement to the Architect of the Capitol Extension, by the first day of December, setting forth the public property in all the buildings, rooms, and grounds under their charge, purchased during each year, and an account of the disposition of such property during the same period, whether by sale or otherwise. [R. S.]

Act of June 4, 1872, ch. 287, 17 Stat. L. 220.

Sec. 1833. [*Inventory of public property.*] The Architect of the Capitol Extension shall make out and keep, in proper books, a complete inventory of all public property in and about the Capitol, the Botanical Garden, and the President's House, adding thereto, from time to time, an account of such property as may be procured, subsequently to the taking of the first inventory, as well as an account of the sale or other disposal of such property. And he shall submit an annual report of such inventories and accounts, on the first Monday of December to Congress. [R. S.]

Act of July 15, 1870, ch. 300, 16 Stat. L. 364.

Sec. 1834. [*Two last sections not to apply to Library of Congress, etc.*] The two preceding sections shall not apply to the books, pamphlets, papers, and documents in the Library of Congress, nor to the supplies of stationery and fuel in the several public buildings and offices therein referred to. [R. S.]

Act of July 15, 1870, ch. 300, 16 Stat. L. 364.

Sec. 197. [*Inventories of property in buildings, etc., of Executive Departments.*] The Secretary of State, the Secretary of the Treasury, the Secretary of the Interior, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney-General, and Commissioner of Agriculture shall keep, in proper books, a complete inventory of all the property belonging to the United States in the buildings, rooms, offices, and grounds occupied by them, respectively, and under their charge, adding thereto, from time to time, an account of such property as may be procured subsequently to the taking of such inventory, as well as an account of the sale or other disposition of any of such property, except supplies of stationery and fuel in the public offices and books, pamphlets, and papers in the Library of Congress. [R. S.]

Act of July 15, 1870, ch. 300, 16 Stat. L. 364.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 241, by adding at the end of the section the words

"except supplies of stationery and fuel in the public offices and books, pamphlets, and papers in the Library of Congress," as given in the text.

Sec. 397. [*Inventory of property in charge of Post-office Department.*] The Postmaster-General shall make out and keep, in proper books, full and complete inventories and accounts of all the property belonging to the United States in the buildings, rooms, offices, and grounds occupied by him and under his charge; and shall add thereto, from time to time, an account of such property as may be procured subsequently to the taking of the same, and also an account of the sale or disposal of any such property, and to report the same to Congress during the first week of each annual session. But this section shall not apply to the supplies of stationery and fuel. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 286.

[SEC. 1.] [*Inventory of property in Executive Mansion.*] * * * And hereafter a complete inventory, in proper books, shall be made annually, by the steward, under the direction of the officer in charge of public buildings and grounds, of all the public property in and belonging to the Executive Mansion, showing when purchased, use to which applied, cost, condition, and final disposition, to be submitted to Congress with annual report of the officer in charge of public buildings and grounds. * * * [31 Stat. L. 97.]

This is from the Legislative, Executive, and Judicial Appropriation Act of April 17, 1900, ch. 192.

An act to regulate the making of property returns by officers of the Government.

[Act of March 29, 1894, ch. 49, 28 Stat. L. 47.]

[SEC. 1.] [*Property returns — certificates of losses.*] That instead of forwarding to the accounting officers of the Treasury Department returns of public property entrusted to the possession of officers or agents, the Quartermaster-General, the Commissary-General of Subsistence, the Surgeon-General, the Chief of Engineers, the Chief of Ordnance, the Chief Signal Officer, the Paymaster-General of the Navy, the Commissioner of Indian Affairs, or other like chief officers in any Department, by, through, or under whom stores, supplies, and other public property are received for distribution, or whose duty it is to receive or examine returns of such property, shall certify to the proper accounting officer of the Treasury Department, for debiting on the proper account, any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him. [28 Stat. L. 47.]

SEC. 2. [*Contents and effect of certificate.*] That said certificate shall set forth the condition of such officer's or agent's property returns, that it includes all charges made up to its date and not previously certified, that he has had a reasonable opportunity to be heard and has not been relieved of responsibility; the effect of such certificate, when received, shall be the same as if the facts therein set forth had been ascertained by the accounting officers of the Treasury Department in accounting. [28 Stat. L. 47.]

SEC. 3. [*Existing rules, how affected — opportunity for relief.*] That the manner of making property returns to or in any administrative bureau or department, or of ascertaining liability for property, under existing laws and regulations, shall not be affected by this Act, except as provided in section one; but in all cases arising as to such property so intrusted the officer or agent shall have an opportunity to relieve himself from liability. [28 Stat. L. 47.]

See R. S. sec. 225; see also NAVY, vol. 5, p. 308, as to oath of commanding officer in settlement of military property accounts, and R. S. sec. 284 as to settlement of pursers'

accounts for property lost on public vessel (given under WAR DEPARTMENT AND MILITARY ESTABLISHMENT).

SEC. 4. [*Regulations to enforce Act.*] That the heads of the several Departments are hereby empowered to make and enforce regulations to carry out the provisions of this Act. [28 Stat. L. 47.]

"On October 6, 1894, the auditor for the war department officially stated that no regulations under this Act have been made which affect this office."

"By General Orders, No. 22, Headquarters of the Army, July 6, 1894, the following regulations are promulgated under this Act:

"By direction of the secretary of war, and in conformity with the above Act (quoted in the order), the following is published for the information and guidance of all concerned:

"I. All returns of stores or supplies will be rendered as required by regulations or orders, and will be forwarded within twenty days after the expiration of the accounting periods to the chief of the bureau to which the property pertains. Abstracts of purchases will be forwarded with the money accounts.

"II. As soon as possible after the receipt

of the return by the proper chief of bureau it will be examined in his office, and the officer making the return will be notified of all errors and irregularities found therein and granted three months to correct them. Suspensions or disallowances will not be made on account of slight informalities which do not affect the validity of the voucher, but the officer's attention may be called to them. Whenever the errors have been corrected, or compensation has been made for deficient articles, and the action of the bureau chief is sustained or modified by the secretary of war, the return will be regarded as settled and the officer who rendered the return will be notified accordingly.

"III. If the necessary corrections in the return be not made within the prescribed time the facts will be reported to the secretary of war. When it has been determined that the money value of the property for which

an officer has failed to account shall be refunded to the United States, the facts will be certified to the proper accounting officer of the treasury by the chief of bureau.

"The provisions of the above act and regulations are applicable to all property re-

turns rendered for any period of accountability subsequent to March 31, 1894.

"Paragraphs 1327, 1328, 1329, 1330, 1332, and section 7, paragraph 1431, Army Regulations 1889, are hereby revoked." *Compilers' note, 2 Supp. R. S. 174.*

SEC. 5. [*Repeal.*] That all laws or parts of laws inconsistent with the provisions of this Act are hereby repealed. [28 Stat. L. 47.]

Sec. 3748. [*Uniforms and equipments.*] The clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person not a soldier, or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits, or accouterments, so furnished, and which have been the subjects of any such sale, barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein; but the same may be seized and taken wherever found by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster, or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accouterments by any person not a soldier or officer of the United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift. [*R. S.*]

Act of March 3, 1863, ch. 75, 12 Stat. L. 735.

R. S. sections 3748-3755 constitute title 44

of the Revised Statutes, entitled "The Public Property."

Sec. 3749. [*Solicitor of Treasury may rent or sell unproductive lands or property.*] The Solicitor of the Treasury is authorized, with the approval of the Secretary of the Treasury, to rent, for a period not exceeding three years, or to sell, at public sale, any unproductive lands, or other property of the United States acquired under judicial process or otherwise in the collection of debts, after advertising the time, place, and conditions of such sale for three months preceding the same in some newspaper published in the vicinity thereof, in such manner and upon such terms as may, in his judgment, be most advantageous to the public interest. [*R. S.*]

Act of March 3, 1863, ch. 76, 12 Stat. L. 740.

Real estate acquired by United States under internal revenue laws. See INTERNAL REVENUE, vol. 3, p. 592.

Approval of secretary necessary.—The legislation of Congress would be wholly ineffectual to prevent the evils which it was designed to remedy if this approval should not be treated as a substantial requirement, a thing essential to give validity to the sale. The question is one of power, and the power is given to sell when the secretary thinks it advisable to do so. His approval is a condition precedent, without which the solicitor has no authority whatever to act. *U. S. v. Jonas*, (1873) 19 Wall. (U. S.) 598.

Under earlier Acts.—If the Congress of 1830 (by Act of May 29, 1830) intended that the solicitor of the treasury should be the sole judge of the propriety of selling the property of the United States taken in payment of debts, the Congress of 1863 (by Act of March 3, 1863) thought proper to abandon this policy and to declare that in no case

should there be a sale without the approval of the secretary of the treasury. It went further and said that all sales should be at public auction, and gave the power to lease for a limited time, but whether the property were leased or sold, the secretary should be first consulted and his consent obtained, and all persons given a fair and equal opportunity of buying. The system thus inaugurated did away with the objections to private sales, and made the secretary of the treasury responsible, as he should be, for the proper administration of this branch of the public service. *U. S. v. Jonas*, (1873) 19 Wall. (U. S.) 598.

Written evidence of approval.—The purchaser is not bound to accept a deed unless there be written evidence of this approval. *U. S. v. Jonas*, (1873) 19 Wall. (U. S.) 598.

As the important power of selling the property of the United States acquired in payment of debts can only be exercised by the solicitor with the approval of the secretary, there would seem to be the best of reasons for requiring some written evidence

of this approval, not only for the security of the purchaser but for the protection of the government. *U. S. v. Jonas*, (1873) 19 Wall. (U. S.) 598.

Presumption of approval.—The approval of the secretary is not a fact to be presumed because the deed of the solicitor is the deed of an official person, nor even because it recites that the sale was made in pursuance of this Act. *U. S. v. Jonas*, (1873) 19 Wall. (U. S.) 598.

Lands acquired on judgments.—The solic-

itor of the treasury, by virtue of this section and R. S. sec. 3760, has charge of, and, with the approval of the secretary of the treasury, power to rent or sell lands acquired in satisfaction of judgments on bonds of internal-revenue collectors. (1878) 16 Op. Atty.-Gen. 143.

“Authority to convey to the purchaser the property purchased at such sale, though not conferred on the solicitor in express terms, is undoubtedly to be implied.” (1881) 17 Op. Atty.-Gen. 100.

[*Secretary of Treasury may lease unproductive public property.*] * * *

That authority be, and is hereby, given to the Secretary of the Treasury to lease, at his discretion for a period not exceeding five years, such unoccupied and unproductive property of the United States under his control, for the leasing of which there is no authority under existing law, and such leases shall be reported annually to Congress. * * * [20 Stat. L. 383.]

This is from the Sundry Civil Appropriation Act of March 3, 1879, ch. 182.

Where the land leased was occupied by the government at the time the lease was made, it is not within the terms of the provisions of this Act. (1893) 20 Op. Atty.-Gen. 537. See also (1897) 21 Op. Atty.-Gen. 476.

Ellis Island.—“Under none of these provisions of the statutes can authority be found for the secretary of the treasury to lease any part of Ellis Island which is both productive and occupied.” (1897) 21 Op. Atty.-Gen. 476.

An act authorizing the Secretary of War to lease public property in certain cases.

[Act of July 28, 1892, ch. 316, 27 Stat. L. 321.]

[*Secretary of War may lease public property not required.*] That authority be, and is hereby, given to the Secretary of War, when in his discretion it will be for the public good, to lease, for a period not exceeding five years and revocable at any time, such property of the United States under his control as may not for the time be required for public use and for the leasing of which there is no authority under existing law, and such leases shall be reported annually to Congress: *Provided*, That nothing in this act contained shall be held to apply to mineral or phosphate lands. [27 Stat. L. 321.]

Longer than five years.—This Act forbids an occupation which contemplates permanency or duration longer than five years. (1897) 21 Op. Atty.-Gen. 537.

A revocable license, without limitation as

to time, by the secretary of war to a Roman Catholic archbishop, to erect and maintain a chapel on a military reservation, transcends the statute. (1897) 21 Op. Atty.-Gen. 537.

[SEC. 1.] [*Secretary of Treasury may sell lands acquired by devise.*] * * * The Secretary of the Treasury is authorized to sell such lands as have been acquired by the United States by devise, upon such terms and after such public notice by advertisement as he may deem best for the public interest. * * * [22 Stat. L. 319.]

This is from the Sundry Civil Appropriation Act of Aug. 7, 1882, ch. 433.

[*Transfer of accumulated supplies.*] * * * And for the purpose of utilizing accumulated naval supplies, the transfer is authorized, after requi-

sition upon the Paymaster-General of the Navy, of any supplies belonging to one bureau and available for the use of another without reimbursement therefor by the bureau receiving the supplies so transferred: *Provided*, That supplies obtained for a specific object and still needed therefor, and supplies bought within the fiscal year in which the requisition is made, and provisions, clothing, and small stores shall not be subject to transfer without charge under the terms of this act. [25 Stat. L. 818.]

This is from the Naval Appropriation Act of March 2, 1889, ch. 371, following a provision as to the duty of the bureau of pro-

visions and clothing to keep an account and report supplies on hand.

[*Sale of condemned naval stores.*] * * * The Secretary of the Navy is hereby authorized to sell, after advertisement of the sale for such time as in his judgment the public interests may require, condemned naval supplies, stores, and materials, either by public auction or by advertisement for sealed proposals for the purchase of the same. * * * [26 Stat. L. 194.]

This is from the Naval Appropriation Act of June 30, 1890, ch. 640.

Sec. 3750. [*Solicitor of Treasury to have charge of property transferred to the United States.*] The Solicitor of the Treasury shall have charge of all lands and other property which have been or may be assigned, set off, or conveyed to the United States in payment of debts, and of all trusts created for the use of the United States in payment of debts due them; and of the sale and disposal of lands assigned or set off to the United States in payment of debts, or vested in them by mortgage or other security for the payment of debts: *Provided*, That this section shall not apply to real estate which has been or shall be assigned, set off, or conveyed to the United States, in payment of debts arising under the internal-revenue laws, nor to trusts created for the use of the United States, in payment of such debts due them. [R. S.]

Act of May 29, 1830, ch. 153, 4 Stat. L. 414; Act of March 2, 1867, ch. 169, 14 Stat. L. 472.

Reference to state laws.—There can be no doubt that the Act regulating the duties of solicitor had a reference to existing laws in some of the states, which authorize the debtor to set off his real estate on execution; and in other cases where he surrenders all his property to the United States on which he is released; but all the provisions are not limited to these cases. Some of them are general and apply to cases of "trusts created for the benefit of the United States in payment of debts due them." *U. S. v. Lane*, (1844) 3 McLean (U. S.) 365, 26 Fed. Cas. No. 15,559.

Power of solicitor.—There is no imagi-

nable reason why a trustee having power to sell lands should not have power to sell movables and incorporeal rights, and the policy of the Act demands it. At any rate, however, the solicitor of the treasury is charged with the administration of said trusts; he may do, therefore, under this statute, whatever any other trustee would be allowed to do in a court of chancery. (1842) 4 Op. Atty.-Gen. 135.

Land taken to secure debt.—Land taken, not as a purchase, but to secure the debt of a receiver, and sold on credit in order that the sum due by the receiver might be paid, is a case of trust recommended by the public interest and opposed to no law or public policy. *U. S. v. Lane*, (1844) 3 McLean (U. S.) 365, 26 Fed. Cas. No. 15,559.

Sec. 3751. [*To release lands in certain cases.*] In cases where real estate has become the property of the United States, by conveyance, extent, or otherwise, in payment of a debt, and such debt is afterward fully paid in money, and the same has been received by the United States, the Solicitor of the Treasury may release by deed or otherwise convey the same real estate to the debtor from whom it was taken, if he is living, or, if such debtor is dead, to his heirs or devisees, or such person as they may appoint: *Provided*, That this section

shall not apply to real estate so acquired by the United States in payment of any debt arising under the internal-revenue laws. [R. S.]

Act of May 29, 1830, ch. 153, 4 Stat. L. 414; Act of March 2, 1867, ch. 169, 14 Stat. L. 472.

Sec. 3752. [*Power to obtain releases.*] Whenever any lands have been or shall be conveyed to individuals or officers, for the use or benefit of the United States, the President is authorized to obtain from such person a release of his interest to the United States. [R. S.]

Act of April 28, 1828, ch. 41, 4 Stat. L. 264.

Sec. 3753. [*Releasing property from attachment.*] Whenever any property owned or held by the United States, or in which the United States have or claim an interest, shall, in any judicial proceeding under the laws of any State, district, or Territory, be seized, arrested, attached, or held for the security or satisfaction of any claim made against such property, the Secretary of the Treasury, in his discretion, may direct the Solicitor of the Treasury to cause a stipulation to be entered into by the proper district attorney for the discharge of such property from such seizure, arrest, attachment, or proceeding, to the effect that upon such discharge, the person asserting the claim against such property shall become entitled to all the benefits of this and the following section. Nothing herein contained shall, however, be considered as recognizing or conceding any right to enforce by seizure, arrest, attachment, or any judicial process, any claim against any property of the United States, or against any property held, owned, or employed by the United States, or by any Department thereof, for any public use, or as waiving any objection to any proceeding instituted to enforce any such claim. [R. S.]

Act of June 11, 1864, ch. 117, 13 Stat. L. 122.

The right of a party in ordinary litigation to a release of property from attachment upon giving a bond for indemnity is fundamental. That doctrine was recognized in the debate on the Act of 1864, which now appears in the above sections of the law. It manifestly applies with greater force and reason in a case affecting the government as *parens patriæ* than where the interests of private litigants alone are involved. The statute enables the government, although not a party nor in general subject to be made such, to intervene without prejudice and to invoke that doctrine. (1903) 24 Op. Atty.-Gen. 679.

This Act is not mandatory in its provisions, and in a palpable case of improper interference with the government's rights the strong executive arm may be relied upon for the protection of its sovereignty, the language of the Act being that the secretary of the treasury may in his discretion cause such stipulation to be entered. (1903) 24 Op. Atty.-Gen. 679.

Proceedings under state law only.—To authorize the discharge of a vessel upon this stipulation the "judicial proceeding" in which it is arrested must be one taken or conducted "under"—in subordination to—the law of the state. Such a proceeding can only take place in the state court. It follows that the section does not include a "judicial proceeding" in the national courts. The Revenue Cutter, (1876) 4 Sawy. (U. S.) 136, 20 Fed. Cas. No. 11,712.

Suit in admiralty to enforce state lien.—

A suit in admiralty in a national court to enforce a lien given by the state law is not a judicial proceeding under such law, and therefore the United States is not entitled in such suit to have the *res* discharged from arrest under this section. The Revenue Cutter, (1876) 4 Sawy. (U. S.) 136, 20 Fed. Cas. No. 11,712.

Nature of stipulation.—The nature and necessities of the subject, the sovereign claim and interest, the object to be gained, the words of the statute, its fair inference and clear reservations, all convince beyond doubt that the "stipulation to be entered into" is an engagement on behalf of the United States which shall be addressed to and filed with the particular court under proper reserve of submission to the jurisdiction, whereupon discharge of the property as matter of course would follow, and adverse claimants would have the opportunity of establishing in accordance with the law their respective claims against the bond of indemnity thus provided. (1903) 24 Op. Atty.-Gen. 679.

The word "stipulation" as used in this section denotes an undertaking in the nature of bail, and is analogous to the "stipulation for value" under present admiralty practice, the measure of the government's obligation being limited in this section to "the value of the interest of the United States in the property in question." (1903) 24 Op. Atty.-Gen. 679.

The discretion of courts relative to such

"stipulation" is practically limited to a consideration of the bond or equivalent engagement, and the sufficiency of the sureties where security is required, the release of the property following as a matter of right. (1903) 24 Op. Atty.-Gen. 679.

Extent of exemption.—The United States is entitled to the undisputed possession and control of its property, and of property in which it is interested to the extent of that interest, and this possession and control are exempt from the process of every court. (1903) 24 Op. Atty.-Gen. 679.

Property in general included.—The meaning of the word "stipulation" is not necessarily restricted to admiralty law; it may be applied to property in general in proper cases, and was employed by Congress with this intention and meaning in this section. (1903) 24 Op. Atty.-Gen. 679.

No instrumentality of the government may be taken into custody and held under any adverse authority whatever. This applies as well to an instrumentality in process of creation as to one already completed. (1903) 24 Op. Atty.-Gen. 679.

Sec. 3754. [*Payment.*] In all cases where a stipulation is entered into under the preceding section, and, in consequence thereof, the property is discharged, and final judgment is afterward given in the court of last resort to which the Secretary of the Treasury may deem proper to cause such proceedings to be carried, affirming the claim for the security or satisfaction of which such proceedings have been instituted, and the right of the person asserting the same to enforce it against such property by means of such proceedings, notwithstanding the claims of the United States thereto, such final judgment shall be deemed, to all intents and purposes, a full and final determination of the rights of such person, and shall entitle such person, as against the United States, to such rights as he would have had in case possession of such property had not been changed. Whenever such claim is for the payment of money, and the same is by such judgment found to be due, the presentation of a duly authenticated copy of the record of such judgment and proceedings shall be sufficient evidence to the proper accounting officers for the allowance thereof; and the same shall thereupon be allowed and paid out of any moneys in the Treasury not otherwise appropriated. The amount so to be allowed and paid shall not, however, exceed the value of the interest of the United States in the property in question. [R. S.]

Act of June 11, 1864, ch. 117, 13 Stat. L. 122.

Sec. 3755. [*Preservation, sale, etc., of abandoned property.*] The Secretary of the Treasury is authorized to make such contracts and provisions as he may deem for the interest of the Government, for the preservation, sale, or collection of any property, or the proceeds thereof, which may have been wrecked, abandoned, or become derelict, being within the jurisdiction of the United States, and which ought to come to the United States, or of any moneys, dues, and other interests lately in the possession of or due to the so-called Confederate States, or their agents, and now belonging to the United States, which are now withheld or retained by any person, corporation, or municipality whatever, and which ought to have come into the possession and custody of, or been collected or received by, the United States; and in such contracts to allow such compensation to any person giving information thereof, or who shall actually preserve, collect, surrender, or pay over the same, as the Secretary of the Treasury may deem just and reasonable. No costs or claim shall, however, become chargeable to the United States in so obtaining, preserving, collecting, receiving, or making available property, debts, dues, or interests, which shall not be paid from such moneys as shall be realized and received from the property so collected, under each specific agreement. [R. S.]

Res. of June 21, 1870, No. 75, 16 Stat. L. 380.
The clause "which ought to come to the United States" is not intended as a declaratory clause, but as a descriptive and limit-

ing one—limiting the operation of the law to those classes of property, wrecked, abandoned, or become derelict, "which ought to come to the United States." *Russell v. Forty*

Bales Cotton, (1872) 21 Fed. Cas. No. 12,154.

War claims.—Under the resolution of June 21, 1870, it was held in *Russell v. Forty Bales Cotton*, (1872) 21 Fed. Cas. No. 12,154, that the continuation of the resolution shows plainly the fact that the property, dues, and claims that "ought to come to the United States" were such as came through the war of the rebellion, and no others.

Real and personal property.—The words "any property" include real as well as personal property. (1870) 13 Op. Atty.-Gen. 569.

That the word "derelict" is here used in a sense applicable to real estate is doubtful perhaps; but in view of the legislation of Congress enacted since the "so-called Confederate States" began to exist, there can be little doubt that the preceding word, "abandoned," may be applied to real property. (1870) 13 Op. Atty.-Gen. 569.

Wreckage.—This section relates apparently to property which ought equitably to go to the United States, and not to wreckage of any kind. *U. S. v. Tyndale*, (C. C. A. 1902) 116 Fed. Rep. 820.

What wrecks included.—This section undoubtedly includes wrecks which are, unless they have been definitely abandoned or allowed to become derelict, the property of the United States, even if it does not exclusively refer to such wrecks, but extends also to the property of private owners which has been wrecked, abandoned, or become derelict. (1900) 23 Op. Atty.-Gen. 76.

As to Spanish vessels wrecked in battle by the naval vessels of the United States during the war with Spain, and lying along the coast of Cuba, see (1900) 23 Op. Atty.-Gen. 76.

Recovery on fraudulent judgment.—Where a judgment recovered by the United States in the Court of Claims has been paid, and is subsequently set aside on the ground of fraud, the money can be recovered, if at all, because of the fraud, and not because it is property or proceeds thereof belonging to the United States and now withheld as contemplated by this section. (1899) 22 Op. Atty.-Gen. 411.

Contract to recover money fraudulently obtained.—The secretary of the treasury has no authority under this section to enter into a contract with a private individual for the collection of money paid upon a fraudulent judgment with regard to the ownership of certain property captured by the United States forces. (1899) 22 Op. Atty.-Gen. 411.

Liability of United States under contract.

—The Act authorizing the secretary of the treasury to make contracts in relation to certain property and therein to allow compensation to persons "giving information thereof," would, without further restriction, authorize the secretary of the treasury to create what might be called a general liability on the part of the United States to pay the compensation agreed upon, a liability which the government would not deny, though in order to its discharge an appropriation of money by Congress might be necessary. But by the proviso which concludes the Act, the authority to create such general liability is taken away. All modes of payment other than from moneys realized from property secured under specific agreement being prohibited, there would seem to be no ground for doubt that an agreement to pay in this mode was authorized—specially and solely authorized—by the Act. (1870) 13 Op. Atty.-Gen. 569.

SEC. 3. [Draping public buildings in mourning prohibited.] That hereafter no building owned, or used for public purposes, by the Government of the United States, shall be draped in mourning and no part of the public fund shall be used for such purpose. [27 Stat. L. 715.]

This is from the Legislative, Executive, and Judicial Appropriation Ac. of March 3, 1893, ch. 211.

[SEC. 1.] [Public buildings outside District of Columbia under control of Secretary of Treasury.] * * * That all court-houses, custom-houses, post-offices, appraiser's stores, barge offices, subtreasuries, and other public buildings outside of the District of Columbia and outside of military reservations which have been heretofore purchased or erected, or are at present in course of construction, or which may hereafter be erected or purchased out of any appropriation under the control of the Treasury Department, together with the site or sites thereof, are hereby expressly declared to be under the exclusive jurisdiction and control and in the custody of the Secretary of the Treasury, who shall have full power to take possession of and assign and reassign rooms therein to such Federal officials, clerks, and employees as in his judgment and discretion should be furnished with offices or rooms therein. * * * [30 Stat. L. 614.]

This is from the Sundry Civil Appropriation Act of July 1, 1898, ch. 546.

An Act to protect the harbor defenses and fortifications constructed or used by the United States from malicious injury, and for other purposes.

[Act of July 7, 1898, ch. 576, 30 Stat. L. 717.]

[SEC. 1.] [*Injury to or interference with harbor defenses.*] That any person who shall willfully, wantonly, or maliciously trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully or maliciously interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, or shall knowingly, willfully or wantonly violate any regulation of the War Department that has been made for the protection of such mine, torpedo, fortification or harbor-defense system shall be punished, on conviction thereof in a district court of the United States for the district in which the offense is committed, by a fine of not less than one hundred nor more than five thousand dollars, or with imprisonment for a term not exceeding five years, or with both, in the discretion of the court. [30 Stat. L. 717.]

SEC. 2. [*Punishment of offenses committed in places under Federal jurisdiction.* See CRIMES AND OFFENSES, vol. 2, p. 356.]

[SEC. 1.] [*Assistant custodians and janitors — pay of.*] * * * Pay of assistant custodians and janitors: For pay of assistant custodians and janitors, including all personal services in connection with the care of all public buildings under control of the Treasury Department outside of the District of Columbia, * * * and hereafter no other fund appropriated shall be used for this service. [31 Stat. L. 1153.]

This is from the Sundry Civil Appropriation Act of March 3, 1901, ch. 853.

PUBLIC WORKS.

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See *PRIZE FIGHTING*, ante, p. 88.

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See *HEALTH AND QUARANTINE*, vol. 3, p. 213.

QUARTERMASTER.

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Transportation of Animals, see ANIMALS, vol. 1, p. 440.

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Regulations of Customs Laws, see CUSTOMS DUTIES, vol. 2, p. 372.

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Transporting Timber Cut from Public Lands, see *TIMBER LANDS AND FOREST RESERVES*.
Transportation of Troops, see *WAR DEPARTMENT AND MILITARY ESTABLISHMENT*.
 And see generally *CARRIERS*, vol. 1, p. 718; *INTERSTATE COMMERCE*, vol. 3, p. 808.

[I. GOVERNMENT-AIDED RAILROADS.]

Sec. 5256. [*Union Pacific Railroad.*] The books, records, correspondence, and all other documents of the Union Pacific Railroad Company, shall at all times be open to inspection by the Secretary of the Treasury, or such persons as he may delegate for that purpose. The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation. No dividend shall hereafter be made by said company but from the actual net earnings thereof; and no new stock shall be issued or mortgages or pledges made on the property or future earnings of the company without leave of Congress, except for the purpose of funding and securing debt now existing, or the renewals thereof. No director or officer of said road shall hereafter be interested, directly or indirectly, in any contract therewith except for his lawful compensation as such officer. Any director or officer who shall pay or declare, or aid in paying or declaring, any dividend, or creating any mortgage or pledge prohibited by this act, shall be punished by imprisonment not exceeding two years, and by fine not exceeding five thousand dollars. [R. S.]

Act of March 3, 1873, ch. 226, 17 Stat. L. 509.
 Secs. 5256-5262 constitute title 64 of the Revised Statutes entitled "Railways."

The following Acts being the original provisions relating to the Union Pacific Railroad are not included in the Revised Statutes, and are here set out to explain subsequent provisions.

Act of July 1, 1862, ch. 120, 12 Stat. L. 489.

An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military and Other Purposes.

[SEC. 1.] That [names of incorporators], together with five commissioners to be appointed by the Secretary of the Interior, and all persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic in deed and in law, by the name, style, and title of "The Union Pacific Railroad Company;" and by that name shall have perpetual succession, and shall be able to sue and to be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal: and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a con-

tinuous railroad and telegraph, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, to the western boundary of Nevada Territory, upon the route and terms hereinafter provided, and is hereby vested with all the powers, privileges and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said company shall consist of one hundred thousand shares of one thousand dollars each, which shall be subscribed for and held in not more than two hundred shares by any one person, and shall be transferable in such manner as the by-laws of said corporation shall provide. The persons hereinbefore named, together with those to be appointed by the Secretary of the Interior, are hereby constituted and appointed commissioners, and such body shall be called the Board of Commissioners of the Union Pacific Railroad and Telegraph Company, and twenty-five shall constitute a quorum for the transaction of business. The first meeting of said board shall be held at Chicago at such time as the commissioners from Illinois herein named shall appoint, not more than three nor less than one month after the passage of this act, notice of which shall be given by them to the other commissioners by depositing a call thereof in the post office at Chicago, post paid, to their address at least forty days before said meeting, and also by publishing said notice in one daily newspaper in each of the cities of Chicago and Saint Louis. Said board shall organize by the choice from its number of a president, secretary and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities in the United States as they or a quorum of them shall determine, to receive subscriptions to the capital stock of said corporation, and a cash payment of ten per centum on all subscriptions, and to receipt therefor. So soon as two thousand shares shall be in good faith subscribed for, and ten dollars per share actually paid into the treasury of the company, the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which subscription books have been opened at least thirty days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by proxy, shall then and there elect by ballot not less than thirteen directors for said corporation; and in such election each share of said capital shall entitle the owner thereof to one vote. The president and secretary of the board of

commissioners shall act as inspectors of said election, and shall certify under their hands the names of the directors elected at said meeting; and the said commissioners, treasurer and secretary shall then deliver over to said directors all the properties, subscription books and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stockholders shall constitute said body politic and corporate. At the time of the first and each triennial election of directors by the stockholders two additional directors shall be appointed by the President of the United States, who shall act with the body of directors, and to be denominated directors on the part of the government; any vacancy happening in the government directors at any time may be filled by the President of the United States. The directors to be appointed by the President shall not be stockholders in the Union Pacific Railroad Company. The directors so chosen shall, as soon as may be after their election, elect from their own number a president and vice-president, and shall also elect a treasurer and secretary. No person shall be a director in said company unless he shall be a bona fide owner of at least five shares of stock in the said company, except the two directors to be appointed by the President as aforesaid. Said company, at any regular meeting of the stockholders called for that purpose, shall have power to make by-laws, rules and regulations as they shall deem needful and proper, touching the disposition of the stock, property, estate, and effects of the company, not inconsistent herewith, the transfer of shares, the term of office, duties and conduct of their officers and servants, and all matters whatsoever which may appertain to the concerns of said company; and the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of this act, and to do all acts and things touching the location and construction of said road and telegraph. Said directors may require payment of subscriptions to the capital stock, after due notice, at such times and in such proportions as they shall deem necessary to complete the railroad and telegraph within the time in this act prescribed. Said president, vice-president and directors shall hold their office for three years, and until their successors are duly elected and qualified, or for such less time as the by-laws of the corporation may prescribe; and a majority of said directors shall constitute a quorum for the transaction of business. The secretary and treasurer shall give such bonds, with such security, as the said board shall from time to time require, and shall hold their offices at the will and pleasure of the directors. Annual meetings of the stockholders of the said corporation, for the choice of officers (when they are to be chosen) and for the transaction of annual business, shall be holden at such time and

place and upon such notice as may be prescribed in the by-laws. [12 Stat. L. 489.]

SEC. 2. And be it further enacted, That the right of way through the public lands be, and the same is hereby, granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, and depots, machine shops, switches, side tracks, turntables, and water stations. The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act and required for the said right of way and grants hereinafter made. [12 Stat. L. 491.]

SEC. 3. And be it further enacted, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed: *Provided*, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption, like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company. [12 Stat. L. 492.]

SEC. 4. And be it further enacted, That whenever said company shall have completed forty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first class railroad, the rails and all the other iron used in the construction and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this

act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: *Provided, however*, That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company, that such forty miles have been completed, in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which oath shall be taken before a judge of a court of record. [12 Stat. L. 492.]

SEC. 5. And be it further enacted, That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, (said interest payable semi-annually,) which interest may be paid in United States treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed. [12 Stat. L. 492.]

SEC. 6. And be it further enacted, That the grants aforesaid are made upon condition that said company shall pay said bonds at

maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid, (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service;) and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof. [12 Stat. L. 493.]

SEC. 7. And be it further enacted, That said company shall file their assent to this act, under the seal of said company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning as herein provided, to the western boundary of Nevada Territory before the first day of July, one thousand eight hundred and seventy-four: *Provided*, That within two years after the passage of this act said company shall designate the general route of said road, as near as may be, and shall file a map of the same in the Department of the Interior, whereupon the Secretary of the Interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from preemption, private entry, and sale; and when any portion of said route shall be finally located, the Secretary of the Interior shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named: *Provided*, That in fixing the point of connection of the main trunk with the eastern connections, it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches, as hereinafter provided. [12 Stat. L. 493.]

SEC. 8. And be it further enacted, That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central and practicable route, through the territories of the United States, to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California. [12 Stat. L. 493.]

SEC. 9. And be it further enacted, That the Leavenworth, Pawnee, and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line, from the Missouri River, at the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific railroad of Missouri, to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri River to the Rocky Mountains should be so located as to require a departure northwardly from the proposed line of said Kansas railroad before it reaches the meridian of longitude aforesaid, the location of the said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kansas River, as aforesaid, and the aforesaid point, on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa, herein authorized to connect with the same, can make connection with the limits prescribed in this act, provided the same can be done without deviating from the general direction of the whole line to the Pacific coast. The route in Kansas, west of the Meridian of Fort Riley, to the aforesaid point, on the one hundredth meridian of longitude, to be subject to the approval of the President of the United States, and to be determined by him on actual survey. And said Kansas company may proceed to build said railroad to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, in the Territory of Nebraska. The Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco or the navigable waters of the Sacramento River, to the eastern boundary of California, upon the same terms and conditions, in all respects, as are contained in this act for the construction of said railroad and telegraph line first mentioned, and to meet and connect with the first mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall file their acceptance of the conditions of this act in the Department of the Interior within six months after the passage of this act. [12 Stat. L. 493.]

SEC. 10. And be it further enacted, That the said company chartered by the State of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas River as aforesaid, within two years after filing their assent to the conditions of this act, as herein provided, and one hundred miles per year thereafter until the whole is completed; and the said Central Pacific Railroad Company of California shall complete fifty miles of their said road within

two years after filing their assent to the provisions of this act, as herein provided, and fifty miles per year thereafter until the whole is completed; and after completing their roads, respectively, said companies, or either of them, may unite upon equal terms with the first-named company in constructing so much of said railroad and telegraph line and branch railroads and telegraph lines in this act hereinafter mentioned, through the Territories from the State of California to the Missouri River, as shall then remain to be constructed, on the same terms and conditions as provided in this act in relation to the said Union Pacific Railroad Company. And the Hannibal and St. Joseph Railroad, the Pacific Railroad Company of Missouri, and the first-named company, or either of them, on filing their assent to this act, as aforesaid, may unite upon equal terms, under this act, with the said Kansas company, in constructing said railroad and telegraph, to said meridian of longitude, with the consent of the said State of Kansas; and in case of said first-named company shall complete their line to the eastern boundary of California before it is completed across said State by the Central Pacific Railroad Company of California, said first-named company is hereby authorized to continue in constructing the same through California, with the consent of said State, upon the terms mentioned in this act, until said road shall meet and connect, and the whole line of said railroad and telegraph is completed; and the Central Pacific Railroad Company of California, after completing its road across said State, is authorized to continue the construction of said railroad and telegraph through the Territories of the United States to the Missouri River, including the branch roads specified in this act, upon the routes hereinbefore and hereinafter indicated, on the terms and conditions provided in this act in relation to the said Union Pacific Railroad Company, until said roads shall meet and connect, and the whole line of said railroad and branches and telegraph is completed. [12 Stat. L. 494.]

SEC. 11. And be it further enacted, That for three hundred miles of said road most mountainous and difficult of construction, to wit: one hundred and fifty miles westwardly from the eastern base of the Rocky Mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada mountains, said points to be fixed by the President of the United States, the bonds to be issued to aid in the construction thereof shall be treble the number per mile hereinbefore provided, and the same shall be issued, and the lands herein granted to be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed; and between the sections last named of one hundred and fifty miles each, the bonds to be issued to aid in the construction thereof shall be double the number per mile first mentioned, and the same shall be issued, and the lands herein granted to be set apart,

upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed: *Provided*, That no more than fifty thousand of said bonds shall be issued under this act to aid in constructing the main line of said railroad and telegraph. [12 Stat. L. 495.]

SEC. 12. And be it further enacted, That whenever the route of said railroad shall cross the boundary of any State or Territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall determine the said location; the companies named in each State and Territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected, continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber, and all materials required for constructing and furnishing said first-mentioned line between the aforesaid point, on the one hundredth meridian of longitude and western boundary of Nevada Territory, whenever the same is required by said first-named company, at cost, over that portion of the road of said companies constructed under the provisions of this act. [12 Stat. L. 495.]

SEC. 13. And be it further enacted, That the Hannibal and Saint Joseph Railroad Company of Missouri may extend its road from Saint Joseph, via Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions, in all respects, for one hundred miles in length next to the Missouri River, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose, use any railroad charter which has been or may be granted by the legislature of Kansas; *Provided*, That if actual survey shall render it desirable, the said company may construct their road, with the consent of the Kansas legislature, on the most direct and practicable route west from St. Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude, or with the main trunk road at said point; but in no event shall lands or bonds

be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee, and Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas. [12 Stat. L. 495.]

SEC. 14. And be it further enacted, That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval, so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions, in all respects, as are contained in this act for the construction of said railroad and telegraph first mentioned; and the said Union Pacific Railroad Company shall complete one hundred miles of the road and telegraph in this section provided for, in two years after filing their assent to the conditions of this act, as by the terms of this act required, and at the rate of one hundred miles per year thereafter, until the whole is completed: *Provided*, That a failure upon the part of said company to make said connection in the time aforesaid, and to perform the obligations imposed on said company by this section and to operate said road in the same manner as the main line shall be operated, shall forfeit to the government of the United States all the rights, privileges and franchises granted to and conferred on said company by this act. And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned. [12 Stat. L. 496.]

SEC. 15. And be it further enacted, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this

act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Whenever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto. [12 Stat. L. 496.]

SEC. 16. And be it further enacted, That at any time after the passage of this act all the railroad companies named herein, and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing, shall be filed in the Department of the Interior, and such consolidated company shall thereafter proceed to construct said railroad and branches and telegraph line upon the terms and conditions provided in this act. [12 Stat. L. 497.]

SEC. 17. And be it further enacted, That in case said company or companies shall fail to comply with the terms and conditions of this act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use, but shall permit the same, for an unreasonable time, to remain unfinished, or out of repair, and unfit for use, Congress may pass any act to insure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States, to repay all such expenditures caused by the default and neglect of such company or companies: *Provided*, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States: *Provided*, That of the bonds of the United States in this act provided to be delivered for any and all parts of the roads to be constructed east of the one hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of the Sierra Nevada mountain, there shall be reserved of each part and instalment twenty-five per centum, to be and remain in the United States treasury, undelivered, until said road and all parts thereof provided for in this act are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each instalment fifteen per centum, to be and remain in the treasury until the whole of the road provided for in this act is fully completed; and if the said road or any part thereof shall fail of completion at the time

limited therefor in this act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States. [12 Stat. L. 497.]

SEC. 18. And be it further enacted, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act. [12 Stat. L. 497.]

SEC. 19. And be it further enacted, That the several railroad companies herein named are authorized to enter into an arrangement with the Pacific Telegraph Company, the Overland Telegraph Company, and the California State Telegraph Company, so that the present line of telegraph between the Missouri River and San Francisco may be moved upon or along the line of said railroad and branches as fast as said roads and branches are built, and if said arrangement be entered into, and the transfer of said telegraph line be made in accordance therewith to the line of said railroad and branches, such transfer shall, for all purposes of this act, be held and considered a fulfillment on the part of said railroad companies of the provisions of this act in regard to the construction of said line of telegraph. And, in case of disagreement, said telegraph companies are authorized to remove their line of telegraph along and upon the line of railroad herein contemplated without prejudice to the rights of said railroad companies named herein. [12 Stat. L. 497.]

SEC. 20. And be it further enacted, That the corporation hereby created and the roads connected therewith, under the provisions of this act, shall make to the Secretary of the Treasury an annual report wherein shall be set forth—

First. The names of the stockholders, and their places of residence, so far as the same can be ascertained;

Second. The names and residences of the directors, and all other officers of the company;

Third. The amount of stock subscribed, and the amount thereof actually paid in;

Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys;

Fifth. The amount received from passengers on the road;

Sixth. The amount received from freight thereon;

Seventh. A statement of the expense of said road and its fixtures;

Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof. Which report shall be sworn to by the president of the said company, and shall be presented to the Secretary of the Treasury on or before the first day of July in each year. [12 Stat. L. 498.]

Act of July 2, 1864, ch. 216, 13 Stat. L. 356.

An Act to amend an Act entitled "An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military, and other Purposes," approved July first, eighteen hundred and sixty-two.

[SEC. 1.] That the capital stock of the company entitled the Union Pacific Railroad Company, authorized by the act of which this act is amendatory, shall be in shares of one hundred dollars, instead of one thousand dollars, each; that the number of shares shall be one million, instead of one hundred thousand; and that the number of shares which any person shall hold to entitle him to serve as a director in said company (except the five directors to be appointed by government) shall be fifty shares, instead of five shares; and that every subscriber to said capital stock for each share of one thousand dollars, heretofore subscribed, shall be entitled to a certificate for ten shares of one hundred dollars each; and that the following words in section first of said act: "which shall be subscribed for and held in not more than two hundred shares by any one person," be, and the same are hereby, repealed. [13 Stat. L. 356.]

SEC. 2. And be it further enacted, That the Union Pacific Railroad Company shall cause books to be kept open to receive subscriptions to the capital stock of said company, (until the entire capital of one hundred millions of dollars shall be subscribed,) at the general office of said company in the city of New York, and in each of the cities of Boston, Philadelphia, Baltimore, Chicago, Cincinnati, and Saint Louis, at such places as may be designated by the President of the United States, and in such other localities as may be directed by him. No subscription for said stock shall be deemed valid unless the subscriber therefor shall, at the time of subscribing, pay or remit to the treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then existing stockholders. The said company shall make assessments upon its stockholders of not less than five dollars per share, and at intervals of not exceeding six months from and after the passage of this act, until the par value of all shares subscribed shall be

fully paid; and money only shall be receivable for such assessment, or as equivalents for any portion of the capital stock hereinbefore authorized. The capital stock of said company shall not be increased beyond the actual cost of said road. And the stock of the company shall be deemed personal property, and shall be transferable on the books of the company, at the general office of said company in the city of New York, or at such other transfer office as the company may establish. [13 Stat. L. 356.]

SEC. 3. And be it further enacted, That the Union Pacific Railroad Company, and all other companies provided for in this act and the act to which this is an amendment, be, and hereby are, empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of its centre line, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station house[s], or any other structures required in the construction and operating of said road. And each of said companies shall have the right to cut and remove trees or other materials that might by falling encumber its road-bed, though standing or being more than one hundred feet therefrom. And in case the owner or claimant of such lands or premises and such company cannot agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any judge of a court of record in any of the territories in which the lands or premises to be taken lie; and said commissioners, in their assessments of damages, shall appraise such premises at what would have been the value thereof if the road had not been built; and upon return into court of such appraisal, and upon the payment to the clerk thereof of the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary in the construction of its road. And said party appealing shall give bonds with sufficient surety or sureties, for the payment of any costs that may arise upon such appeal. And in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost incurred by the appellee, as well as its own. And the payment into court for the use of the owner or claimant, of a sum equal to that finally awarded shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construc-

tion, maintaining, and operating of the road of said company. And in case any of the lands to be taken as aforesaid shall be held by any person residing without the territory, or subject to any legal disability, the court may appoint a proper person who shall give bonds with sufficient surety or sureties, for the faithful execution of his trust, and who may represent in court the person disqualified or absent as aforesaid, when the same proceeding shall be had in reference to the appraisal of the premises to be taken, and with the same effect as have been already described. And the title of the company to the land taken by virtue of this act shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case it shall be necessary for either of the said companies to enter upon lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purpose of its said railroad, and may institute proceedings in manner described for the purpose of ascertaining the value of, and acquiring a title to, the same; and the court may determine the kind of notice to be served on such owner or owners, and may in its discretion appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or non-appearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claims to damages against said company shall be barred. It shall be competent for the legal guardian of any infant, or any other person under guardianship, to agree with the proper company as to damages sustained by reason of the taking of any lands of any such person under disability, as aforesaid, for the use as aforesaid; and upon such agreement being made, and approved by the court having supervision of the official acts of said guardian, the said guardian shall have full power to make and execute a conveyance thereof to the said company which shall vest the title thereto in the said company. [13 Stat. L. 357.]

SEC. 4. And be it further enacted, That section three of said act be hereby amended by striking out the word "five," where the same occurs in said section, and by inserting in lieu thereof the word "ten;" and by striking out the word "ten," where the same occurs in said section, and by inserting in lieu thereof the word "twenty." And section seven of said act is hereby amended by striking out the word "fifteen," where the same occurs in said section, and inserting in lieu thereof the word "twenty-five." And the term "mineral land," wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act or the act to which this is an amendment, shall not defeat or impair any preemption, homestead, swamp land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any bona fide settler, or any lands returned and denominated as mineral lands, and the timber necessary to support his said

improvement as a miner, or agriculturalist, to be ascertained under such rules as have been or may be established by the commissioner of the general land-office, in conformity with the provisions of the preëmption laws: *Provided*, That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturalist, and such quantity for each settler who claims as a miner, as the said commissioner may establish by general regulation: *Provided, also*, That the phrase "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section three, shall not apply to the timber growing or being on any land farther than ten miles from the centre line of any one of said roads or branches mentioned in said act, or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this act is an amendment, which were located, or selected to be located, under the provisions of an act entitled "an act donating lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty two, and notice thereof given at the proper land-office. [13 Stat. L. 358.]

SEC. 5. And be it further enacted, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company, be, and the same is hereby, extended one year from the time in said act designated; and that the Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said road in each year thereafter, and the whole to the state line within four years, and that only one half of the compensation for services rendered for the government by said companies shall be required to be applied to the payment of the bonds issued by the government in aid of the construction of said roads. [13 Stat. L. 358.]

SEC. 6. And be it further enacted, That the proviso to section four of said act is hereby modified as follows, viz: And the President of the United States is hereby authorized, at any time after the passage of this act, to appoint for each and every of said roads three commissioners, as provided for in the act to which this is amendatory; and the verified statement of the president of the California company, required by said section four, shall be filed in the office of the United States surveyor-general for the State of California, instead of being presented to the President of the United States; and the said surveyor-general shall thereupon notify the said commissioners of the filing of such statement, and the said commissioners shall thereupon proceed to examine the portion of said railroad and telegraph line so completed, and make their report thereon to the President of the United States, as provided by the

act of which this is amendatory. And such statement may be filed, and such railroad and telegraph line examined and reported on, by the said commissioners, and the requisite amount of bonds may be issued and the lands appertaining thereto may be set apart, located, entered, and patented, as provided in this act and the act to which this is amendatory upon the construction by said railroad company of California of any portion of not less than twenty consecutive miles of their said railroad and telegraph line, upon the certificate of said commissioners that such portion is completed as required by the act to which this is amendatory. And section ten of the act of which this is amendatory is hereby amended by inserting, after the words "United States," in the last clause, the words "and states intervening." [13 Stat. L. 359.]

SEC. 7. And be it further enacted, That so much of section seventeen of said act as provides for a reservation by the government of a portion of the bonds to be issued to aid in the construction of the said railroads is hereby repealed. And the failure of any one company to comply fully with the conditions and requirements of this act, and the act to which this is amendatory, shall not work a forfeiture of the rights, privileges, or franchise of any other company or companies that shall have complied with the same. [13 Stat. L. 359.]

SEC. 8. And be it further enacted, That for the purpose of facilitating the work on said railroad, and of enabling the said company as early as practicable to commence the grading of said railroad in the region of the mountains, between the eastern base of the Rocky Mountains and the western base of the Sierra Nevada Mountains, so that the same may be finally completed within the time required by law, it is hereby provided that whenever the chief engineer of the said company, and said commissioners, shall certify that a certain proportion of the work required *required* to prepare the road for the superstructure on any such section of twenty miles is done, (which said certificate shall be duly verified,) the Secretary of the Treasury is hereby authorized and required, upon the delivery of such certificate, to issue to said company a proportion of said bonds, not exceeding two thirds of the amount of bonds authorized to be issued under the provisions of the act, to aid in the construction of such section of twenty miles, nor in any case exceeding two thirds of the value of the work done, the remaining one third to remain until the said section is fully completed and certified by the commissioners appointed by the President, according to the terms and provisions of the said act; and no such bonds shall issue to the Union Pacific Railroad Company for work done west of Salt Lake City under this section, more than three hundred miles in advance of the completed continuous line of said railroad from the point of beginning on the one hundredth meridian of longitude. [13 Stat. L. 359.]

SEC. 9. And be it further enacted, That to enable any one of said corporations to

make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri River and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri River, and all other rivers for the convenience of said road: *Provided*, That any bridge or bridges it may construct over the Missouri River, or any other navigable river on the line of said road, shall be constructed with suitable and proper draws for the passage of steamboats, and shall be built, kept, and maintained, at the expense of said company in such manner as not to impair the usefulness of said rivers for navigation to any greater extent than such structures of the most approved character necessarily do: *And provided, further*, That any company authorized by this act to construct its road and telegraph line from the Missouri River to the initial point aforesaid, may construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits; and be subject to all the conditions and restrictions, of this act: *Provided, further, however*, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific Railroad on the 100th degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided. [13 Stat. L. 360.]

SEC. 10. And be it further enacted, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores for the government of the United States. And said section is further amended by striking out the word "forty," and inserting in lieu thereof the words "on

each and every section of not less than twenty." [13 Stat. L. 360.]

SEC. 11. And be it further enacted, That if any of the railroad companies entitled to bonds of the United States, or to issue their first mortgage bonds herein provided for, has, at the time of the approval of this act, issued, or shall thereafter issue, any of its own bonds or securities in such form or manner as in law or equity to entitle the same to priority or preference of payment to the said guaranteed bonds, or said first mortgage bonds, the amount of such corporate bonds outstanding and unsatisfied, or uncanceled, shall be deducted from the amount of such government and first mortgage bonds which the company may be entitled to receive and issue; and such an amount only of such government bonds and such first mortgage bonds shall be granted or permitted, as added to such outstanding, unsatisfied, or uncanceled bonds of the company shall make up the whole amount per mile to which the company would otherwise have been entitled: *And provided further*, That before any bonds shall be so given by the United States, the company claiming them shall present to the Secretary of the Treasury an affidavit of the president and secretary of the company, to be sworn to before the judge of a court of record, setting forth whether said company has issued any such bonds or securities, and, if so, particularly describing the same, and such other evidence as the secretary may require, so as to enable him to make the deduction herein required; and such affidavit shall then be filed and deposited in the office of the Secretary of the Interior. And any person swearing falsely to any such affidavits, shall be deemed guilty of perjury, and, on conviction thereof, shall be punished as aforesaid: *Provided, also*, That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof, made prior to the passage of the act to which this act is an amendment, or made subsequent thereto under the provisions of any act or acts other than this act, and the act amended by this act. [13 Stat. L. 360.]

SEC. 12. And be it further enacted, That the Leavenworth, Pawnee, and Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall build the railroad from the mouth of Kansas River, by the way of Leavenworth, or, if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds. And if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the territories when the Leavenworth, Pawnee, and Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall have completed their road to the hundredth degree of longitude, then the last-named company

may proceed to make said road westward until it meets and connects with the Central Pacific Railroad Company on the same line. And the said railroad from the mouth of Kansas River to the one hundredth meridian of longitude shall be made by the way of Lawrence and Topeka, or on the bank of the Kansas River opposite said towns: *Provided*, That no bonds shall be issued or land certified by the United States to any person or company, for the construction of any part of the main trunk-line of said railroad west of the one hundredth meridian of longitude and east of the Rocky Mountains, until said road shall be completed from or near Omaha, on the Missouri River, to the said one hundredth meridian of longitude. [13 Stat. L. 361.]

SEC. 13. And be it further enacted, That at and after the next election of directors, the number of directors to be elected by the stockholders shall be fifteen; and the number of directors to be appointed by the President shall be five; and the President shall appoint three additional directors to serve until the next regular election, and thereafter five directors. At least one of said government directors shall be placed on each of the standing committees of said company, and at least one on every special committee that may be appointed. The government directors shall, from time to time, report to the Secretary of the Interior, in answer to any inquiries he may make of them, touching the condition, management, and progress of the work, and shall communicate to the Secretary of the Interior, at any time, such information as should be in the possession of the department. They shall, as often as may be necessary to a full knowledge of the condition and management of the line, visit all portions of the line of road, whether built or surveyed; and while absent from home, attending to their duties as directors, shall be paid their actual travelling expenses, and be allowed and paid such reasonable compensation for their time actually employed as the board of directors may decide. [13 Stat. L. 361.]

SEC. 14. And be it further enacted, That the next election for directors of said railroad shall be held on the first Wednesday of October next, at the office of said company in the city of New York, between the hours of ten o'clock a. m. and four o'clock p. m. of said day; and all subsequent regular elections shall be held annually thereafter at the same place; and the directors shall hold their offices for one year, and until their successors are qualified. [13 Stat. L. 362.]

SEC. 15. And be it further enacted, That the several companies authorized to construct the aforesaid roads, are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the

road or business of any or either of the others, and it shall not be lawful for the proprietors of any line of telegraph, authorized by this act, or the act amended by this act to refuse, or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured for each offence, the sum of one hundred dollars, and such other damage as he may have suffered on account of said refusal or failure, to be sued for and recovered in any court of the United States, or of any state or territory of competent jurisdiction. [13 Stat. L. 362.]

SEC. 16. And be it further enacted, That any two or more of the companies authorized to participate in the benefits of this act, are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions, and in such manner as they may agree upon, and as shall not be incompatible with this act, or the laws of the state or states in which the roads of such companies may be, and to assume and adopt such corporate name and style as they may agree upon, with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the Department of the Interior; and thereupon such organization, so formed and consolidated, shall succeed to, possess, and be entitled to receive from the government of the United States, all and singular the grants, benefits, immunities, guarantees, acts, and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements which said companies respectively, at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force as to such consolidated organization. And in case upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid, (and forming, or intended or necessary to form, a portion of a continuous line from each of the several points on the Missouri River, hereinbefore designated, to the Pacific Coast,) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built, until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in con-

tinuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular, the several acts and things hereinbefore provided, authorized, or granted to be done by the company hereinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guarantees, acts, and things to be done and performed by the government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by commissioners in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company the value to be estimated by competent engineers of all the work done and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: *Provided, nevertheless*, That said defaulting company may at any time, before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for, and used in, the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits, and privileges which shall be acquired, possessed, or exercised, pursuant to this section, shall be to that extent an abatement of the rights, benefits, and privileges hereinbefore granted to such other company. And in case any company authorized thereto, shall not enter into such consolidated organization, such company, upon the completion of its road as hereinbefore provided, shall be entitled to, and is hereby authorized to, continue and extend the same under the circumstances, and in accordance with the provisions of this section, and to have all the benefits thereof, as fully and completely as are herein provided, touching such consolidated organization. And in case more than one such consolidated organization shall be made, pursuant to this act, the terms and conditions of this act, hereinbefore recited as to one, shall apply in like manner, force, and effect to the other. *Provided, however*, That rights and interests at any time acquired by one such consolidated organization, shall not be impaired by another thereof. It is further provided that, should the Central Pacific Railroad Company of California complete their line to the eastern line of the State of California, before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the line of the said first-named company, said first-named company may extend their line of road eastward one hundred and fifty miles on the established route, so as to meet and connect with the line of the Union Pacific road, complying in all respects with the provisions and restrictions of this

act as to said Union Pacific road, and upon doing so, shall enjoy all the rights, privileges, and benefits conferred by this act on said Union Pacific Railroad Company. [13 Stat. L. 362.]

SEC. 17. And be it further enacted, That so much of section fourteen of said act as relates to a branch from Sioux City be, and the same is hereby, amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa, or Minnesota, to Sioux City, such company, now organized or may hereafter be organized under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States, by its request, may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route, to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act to which this is an amendment, for the construction of the said Union and Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year: *Provided*, That said Union Pacific Railroad Company shall be, and is hereby, released from the construction of said branch. And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch: *And provided, further*, That if a railroad should not be completed to Sioux City, across Iowa or Minnesota, within eighteen months from the date of this act, then said company designated by the President, as aforesaid, may commence, continue, and complete the construction of said branch as contemplated by the provisions of this act: *Provided, however*, That if the said company so designated by the President as aforesaid shall not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act, then, and in that case, all of the railroad which shall have been constructed by said company shall be forfeited to, and become the property of, the United States. [13 Stat. L. 363.]

SEC. 18. And be it further enacted, That the Burlington and Missouri River Railroad Company, a corporation organized under and by virtue of the laws of the State of Iowa, be, and hereby is, authorized to extend i[t]s road through the Territory of Nebraska from the point where it strikes the Missouri River, south of the mouth of the Platte River, to some point not further west than the one hundredth meridian of west longitude, so as to connect, by the most practicable route, with the main trunk of the Union Pacific

Railroad, or that part of it which runs from Omaha to the said one hundredth meridian of west longitude. And, for the purpose of enabling said Burlington and Missouri River Railroad Company to construct that portion of their road herein authorized, the right of way through the public lands is hereby granted to said company for the construction of said road. And the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side-tracks, turntables, and water-stations. And the United States shall extinguish, as rapidly as may be, consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this section and required for the said right of way and grant of land herein made. [13 Stat. L. 364.]

SEC. 19. And be it further enacted, That for the purpose of aiding in the construction of said road, there be, and hereby is, granted to the said Burlington and Missouri River Railroad Company, every alternate section of public land (excepting mineral lands as provided in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a preëmption or homestead claim may not have attached at the time the line of said road is definitely fixed: *Provided*, That said company shall accept this grant within one year from the passage of this act, by filing such acceptance with the Secretary of the Interior, and shall also establish the line of said road, and file a map thereof with the Secretary of the Interior within one year of the date of said acceptance, when the said Secretary shall withdraw the lands embraced in this grant from market. [13 Stat. L. 364.]

SEC. 20. And be it further enacted, That whenever said Burlington and Missouri River Railroad Company shall have completed twenty consecutive miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act, and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty miles of said road have been completed as required by this act, then, upon certificate of said commissioner[s] to that effect, patents shall issue conveying the right and title to said lands to said company on each side of said road, as far as the same is completed, to the amount aforesaid; and such examination, report and conveyance, by patents, shall continue from time to time, in like manner, until said road shall have been completed. And the President shall appoint

said commissioners, fill vacancies in said commission, as provided in relation to other roads mentioned in the act to which this is an amendment. And the said company shall be entitled to all the privileges and immunities granted to the Hannibal and Saint Joseph's Railroad Company by the said last-mentioned act, so far as the same may be applicable: *Provided*, That no government bonds shall be issued to the said Burlington and Missouri River Railroad Company to aid in the construction of said extension of its road. *And provided, further*, That said extension shall be completed within the period of ten years from the passage of this act. [13 Stat. L. 364.]

SEC. 21. And be it further enacted, That before any land granted by this act shall be conveyed to any company or party entitled thereto under this act, there shall first be paid into the treasury of the United States, the cost of surveying, selecting, and conveying the same, by the said company or party in interest, as the titles shall be required by said company, which amount shall, without any further appropriation, stand to the credit of the proper account, to be used by the commissioner of the general land-office for the prosecution of the survey of the public lands along the line of said road, and so from year to year until the whole shall be completed, as provided under the provisions of this act. [13 Stat. L. 365.]

SEC. 22. And be it further enacted, That Congress may, at any time, alter, amend, or repeal this act. [13 Stat. L. 365.]

Act of March 3, 1869, ch. 127, 15 Stat. L. 324.

An Act to authorize the Transfer of Lands granted to the Union Pacific Railway Company, Eastern Division, between Denver and the Point of its Connection with the Union Pacific Railroad, to the Denver Pacific Railway and Telegraph Company, and to expedite the Completion of Railroads to Denver, in the Territory of Colorado.

[SEC. 1.] That the Union Pacific Railway Company, eastern division, be, and it hereby is, authorized to contract with the Denver Pacific Railway and Telegraph Company, a corporation existing under the laws of the Territory of Colorado, for the construction, operation, and maintenance of that part of its line of railroad and telegraph between Denver City and its point of connection with the Union Pacific railroad, which point shall be at Cheyenne, and to adopt the roadbed already graded by said Denver Pacific Railway and Telegraph Company as said line, and to grant to said Denver Pacific Railway and Telegraph Company the perpetual use of its right of way and depot grounds, and to transfer to it all the rights and privileges, subject to all the obligations pertaining to said part of its line. [15 Stat. L. 324.]

SEC. 2. And be it further enacted. That the said Union Pacific Railway Company, eastern division, shall extend its railroad and telegraph to a connection at the city of Den-

ver, so as to form with that part of its line herein authorized to be constructed, operated, and maintained by the Denver Pacific Railway and Telegraph Company, a continuous line of Railroad and Telegraph from Kansas City, by way of Denver to Cheyenne. And all the provisions of law for the operation of the Union Pacific railroad, its branches and connections, as a continuous line, without discrimination, shall apply the same as if the road from Denver to Cheyenne had been constructed by the said Union Pacific Railway Company, eastern division; but nothing herein shall authorize the said eastern division company to operate the road or fix the rates of tariff for the Denver Pacific Railway and Telegraph Company. [15 Stat. L. 324.]

Sec. 3. And be it further enacted, That said companies are hereby authorized to mortgage their respective portions of said

road, as herein defined, for an amount not exceeding thirty-two thousand dollars per mile, to enable them respectively to borrow money to construct the same; and that each of said companies shall receive patents to the alternate sections of lands along their respective lines of road, as herein defined, in like manner and within the same limits as is provided by law in the case of lands granted to the Union Pacific Railway Company, eastern division: *Provided*, That neither of the companies hereinbefore mentioned shall be entitled to subsidy in United States bonds under the provisions of this act. [15 Stat. L. 324.]

Settlement of indebtedness to government of Central Pacific and Western Pacific railroads. See Act of July 7, 1898, ch. 571, 30 Stat. L. 659.

Sec. 5257. [*Connection of other roads.*] Any railroad company now or hereafter incorporated under any law of the United States, or of any State, which has been or may be organized by an act of Congress, may connect its road with the Union Pacific Railroad, or any of its branches. [R. S.]

Act of July 1, 1862, ch. 120, 12 Stat. L. 496.

Right of state to authorize crossing.—The most that can be claimed under this section is, that Congress intended that no road should be prevented by state legislation from making a connection with the Pacific railroads, if, in the judgment of the President, the necessities of the general government required such connection. It would be a strained and unnatural construction to hold that retaining a right to establish a connection carried with it an implied denial

of the power of the state to authorize a crossing. *Union Pac. R. Co. v. Leavenworth, etc., R. Co.*, (1887) 29 Fed. Rep. 728.

Bridge over Missouri river.—The bridge constructed by the Union Pacific Railroad Company over the Missouri river, between Omaha, in Nebraska, and Council Bluffs, in Iowa, is a part of the railroad. The company was authorized to build it only for the use of the road, and is bound to operate and run the whole road, including the bridge, as one connected and continuous line. *Union Pac. R. Co. v. Hall*, (1875) 91 U. S. 343.

Sec. 5258. [*Interstate communication.*] Every railroad company in the United States, whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination. But this section shall not affect any stipulation between the Government of the United States and any railroad company for transportation or fares without compensation, nor impair or change the conditions imposed by the terms of any act granting lands to any such company to aid in the construction of its road, nor shall it be construed to authorize any railroad company to build any new road or connection with any other road without authority from the State in which such railroad or connection may be proposed. And Congress may at any time alter, amend, or repeal this section. [R. S.]

Act of June 15, 1866, ch. 124, 14 Stat. L. 66.

The purpose and policy of the Congress has been constantly to promote and often to require the formation and operation of continuous lines of transportation. Almost without exception it has authorized, and generally has required, the owners of

railroad bridges built under its authority to allow the use of their bridges and tracks for the passage of trains of connecting companies. *Union Pac. R. Co. v. Chicago, etc., R. Co.*, (C. C. A. 1892) 51 Fed. Rep. 309.

It is impossible to ignore the great public policy in favor of continuous lines thus declared by Congress, and it is in effect-

uation of this policy that such business arrangements as will make such connections effective are made. *Union Pac. R. Co. v. Chicago, etc., R. Co.*, (1896) 163 U. S. 564.

Effect on admiralty jurisdiction.—This section has no bearing upon the question of the jurisdiction of the courts of admiralty. It was passed by Congress under the commercial clause of the Constitution, and authorizes continuous lines of railroad from one state to another state, and thus secures interstate commerce against obstacles even if attempted by state action; and it was not intended to deprive courts of admiralty of any jurisdiction which they otherwise had. The question of jurisdiction is to be considered without regard to this section of the statutes. *The St. Louis*, (1891) 48 Fed. Rep. 312.

Effect on private contracts.—“The Act of June 15, 1866 (sec. 5258, R. S.), was never intended to invade the domain of private contracts between common carriers, which were valid when made, and are not in conflict with the provisions of the law. In *Dubuque, etc., R. Co. v. Richmond*, (1873) 19 Wall. (U. S.) 590, the Supreme Court says of such contracts, ‘that the observance of good faith between parties, and the upholding of private contracts and enforcing their obligations, are matters of higher moment and importance to the public welfare, and are far more reaching in their consequences, than the public policy sought to be established in the facilitation of commercial intercourse among the states, which the Act of June 15, 1866, aimed to promote.’” *Kentucky, etc., Bridge Co. v. Louisville, etc., R. Co.*, (1889) 37 Fed. Rep. 567.

The power to regulate commerce among the several states was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating state legislation. It was not intended that the power should be exercised so as to interfere with private contracts not designed at the time they were made to create impediments to such intercourse. *Dubuque, etc., R. Co. v. Richmond*, (1873) 19 Wall. (U. S.) 584.

Through routes and rates.—This section imposes no duty, but merely permits or authorizes the carriage of traffic from one state to another, and to that end the formation of continuous lines, evidently by mutual agreement. The section was in full force when the cases of *Atchison, etc., R. Co. v. Denver, etc., R. Co.*, (1884) 110 U. S. 668, and *Dubuque, etc., R. Co. v. Richmond*, (1873) 19 Wall. (U. S.) 584, were decided, and was not considered by the Supreme Court as conferring any right to a through route and a joint through rating. It is not a public duty imposed by the Act to regulate commerce that every common carrier, subject to the provisions of that law, shall concede or afford through routing and through rates to all connected lines, whenever and so long as it voluntarily makes or enters into such arrangements with any connecting lines. *Kentucky, etc., Bridge Co.*

v. Louisville, etc., R. Co., (1889) 37 Fed. Rep. 567.

Compelling performance of duties by state.—“The state may doubtless compel the railroad company to perform the duty imposed by its charter of carrying passengers and goods between its termini within the state. But so long at least as that duty is adequately performed by the company, the state cannot, under the guise of compelling its performance, interfere with the performance of paramount duties to which the company has been subjected by the Constitution and laws of the United States.” *Illinois Cent. R. Co. v. Illinois*, (1896) 163 U. S. 142.

State regulations for public convenience.—The above statutory provision was not intended to interfere with the authority of the states to enact such regulations, with respect at least to a railroad corporation of its own creation, as were not directed against interstate commerce, but which only incidentally or remotely affected such commerce, and were not in themselves regulations of interstate commerce, but were designed reasonably to subserve the convenience of the public. *Lake Shore, etc., R. Co. v. Ohio*, (1899) 173 U. S. 285, and cases therein cited.

State laws for security of passengers.—The authority conferred upon railroad companies engaged in commerce among the states, whatever may be the extent of such authority, does not interfere in any degree with the passage by the states of laws having for their object the personal security of passengers while traveling within their respective limits from one state to another on cars propelled by steam. *New York, etc., R. Co. v. New York*, (1897) 165 U. S. 628.

The state may make reasonable regulations to secure the safety of passengers even on interstate trains, within its borders. But the state can do nothing which will directly burden or impede the interstate traffic of the company or impair the usefulness of the facilities for such traffic. *Illinois Cent. R. Co. v. Illinois*, (1896) 163 U. S. 142 (*citing Smith v. Alabama*, (1888) 124 U. S. 465; *Stone v. Farmers L. & T. Co.*, (1885) 116 U. S. 307; *Dubuque, etc., R. Co. v. Richmond*, (1873) 19 Wall. (U. S.) 584).

State law excluding diseased cattle.—The authority given by that statute to railroad companies to carry “freight and property” over their respective roads from one state to another state did not authorize a railroad company to carry into a state cattle known, or which by due diligence might be known, to be in such condition as to impart or communicate disease to the domestic cattle of such state; and a statute of Kansas prescribing as a rule of civil conduct that a person or corporation should not bring into that state cattle known, or which by proper diligence could be known, to be capable of communicating disease to domestic cattle, could not be regarded as beyond the necessities of the case nor as interfering with any right intended to be given or recognized by this section. *Missouri, etc., R. Co. v. Haber*, (1898) 169 U. S. 613.

Sec. 5259. [*Compensation of directors, etc., appointed by the United States.*] Whenever, in any grant of land or other subsidies, made or hereafter to be made, to railroads or other corporations, the United States has reserved the right, or shall reserve it, to appoint directors, engineers, commissioners, or other agents to examine the roads, or act in conjunction with other officers of such company or companies, all the costs, charges, and pay of such directors, engineers, commissioners, or agents shall be paid by the respective companies. Such directors, engineers, commissioners, or agents shall be paid for such services the sum of ten dollars per day, for each and every day actually and necessarily employed, and ten cents per mile for each and every mile actually and necessarily traveled, in discharging the duties required of them, which per diem and mileage shall be in full compensation for such services. In case any company shall refuse or neglect to make such payments, no more patents for lands or other subsidies shall be issued to such company until these requirements are complied with. [R. S.]

Act of July 27, 1866, ch. 278, 14 Stat. L. 299.

Powers of government directors.—Congress did not vest in the government directors any peculiar powers. They had the same powers as other directors and no more; but as government directors they were to make reports to the secretary of the interior in respect of the affairs and matters mentioned in the Act of 1864. They could not, either by a negative vote or by absenting themselves from the meeting, prevent the transaction of the necessary business of the company in which they were entitled to participate on the same terms as their associates. Con-

gress did not look to any action of theirs for the protection of the public interests, but sought to secure those interests by specific legislation. *Union Pac. R. Co. v. Chicago, etc., R. Co.*, (1896) 163 U. S. 564.

Effect on control of stockholders.—This provision for government directors did not take the corporation out of the general rule, that, except in cases where the charter imposes a limitation, the stockholders are the proper parties to take final action in the management of the corporate affairs. *Union Pac. R. Co. v. Chicago, etc., R. Co.*, (1896) 163 U. S. 564.

Sec. 5260. [*Secretary of Treasury to withhold payments to certain railroads.*] The Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been re-imbursed, together with the five per centum of net earnings due and unapplied, as provided by law. [R. S.]

Act of March 3, 1873, ch. 226, 17 Stat. L. 508.

Effect of other Acts.—The provisions in the Act of March 3, 1877, ch. 101, requiring certain contracts for the transportation of goods for Indian tribes, etc., to be let to the lowest bidder after advertisement, does not supersede or repeal this section touching payments to land-grant railroads for services to the government. Whenever it is practicable to obtain for the government the benefit of the Act of 1877 without yielding the benefits secured to it by the other legislation referred to, this should be done. (1884) 18 Op. Atty-Gen. 41.

Prior ascertainment of law applicable.—Under sections 5260 and 5261, R. S., it is sufficient if previous to the payment of claims for freight and transportation over the railroads of companies to which the United States have issued bonds, the law applicable thereto has been ascertained by a judgment of the Court of Claims, or upon appeal to the Supreme Court. Where the law is thus

ascertained in one case, it may be acted upon in all similar cases without further litigation. (1883) 17 Op. Atty-Gen. 512.

Payments included.—The expression "is directed to withhold all payments" refers in the first place to the payments due to such companies at the time of the passage of the Act, but includes also, equitably, all payments thereafter of like sort, the principles governing which shall not previously have been ascertained by the Court of Claims, or upon appeal by the Supreme Court. (1883) 17 Op. Atty-Gen. 512.

Accounts of Sioux City and Pacific railroad.—In the settlement of the accounts of the Sioux City and Pacific Railroad Company (whose road was in part constructed with the aid of subsidy bonds issued under the Acts of July 1, 1862, ch. 120, and July 2, 1864, ch. 216) for government transportation over the subsidized portion of its road, it was advised that the direction in the second section of the Act of March 3, 1873, ch. 266 (sec. 5260, R. S.), "to withhold all payments,"

etc., was then (Nov. 12, 1886), no longer applicable thereto; that only one-half the amount of compensation due the company for such transportation should be withheld, to be applied as required by the Act of July 2, 1864; and that the remaining one-half should be paid over to the company. (1886) 18 Op. Atty-Gen. 503.

Transportation over Kansas Pacific railroad.—All compensation due for transportation for the quartermaster's department performed over the Kansas Pacific railroad (as well as over that portion which was not built with the aid of the government bonds) should be withheld. (1880) 16 Op. Atty-Gen. 516.

Transportation over Fremont, Elkhorn, and Missouri Valley railroad.—The secretary of the treasury has authority to withhold payments for transportation services rendered by the Sioux City and Pacific Railroad Company to the United States over the Fremont, Elkhorn, and Missouri Valley railroad, a road leased by that company, in case of default on the part of the company to reim-

burse the government for interest paid upon the bonds of the United States issued thereto. (1874) 14 Op. Atty-Gen. 375.

Bridge at Omaha.—This section extends to the road of the Union Pacific Company over the bridge at Omaha; and when the circumstances exist which bring it into operation—viz., payment of interest by the government and failure to reimburse by the company—all compensation on account of freight and transportation over the bridge is to be withheld; but when those circumstances do not exist the provision in the Act of 1864 requiring a reservation of one-half compensation becomes applicable to such service. Accordingly, one-half of the compensation for transportation performed for the government by said company over its bridge at Omaha should be withheld and applied to the payment of the bonds issued by the government to the company, except in the case provided for in this section, when all compensation for such service must be withheld. (1873) 14 Op. Atty-Gen. 232.

An act providing for the collection of moneys due the United States from the Pacific Railroad Companies.

[*Act of June 22, 1874, ch. 414, 18 Stat. L. 200.*]

[*Collection of percentage of net earnings of Pacific railroads.*] That the Secretary of the Treasury be, and hereby is, directed to require payment of the railroad-companies, their successors and assigns, or the successors or assigns of any or either of said companies, of all sums of money due or to become due, the United States for the five per centum of the net earnings provided for by the act entitled "An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes" approved July first, eighteen hundred and sixty-two, or by any other act or acts in relation to the companies therein named, or any other such company or companies, and in case either of said railroad-companies shall neglect or refuse to pay the same within sixty days after demand therefor made upon the treasurer of such railroad company, the Secretary of the Treasury shall certify that fact to the Attorney-General, who shall thereupon institute the necessary suits and proceedings to collect and otherwise obtain redress in respect of the same in the proper circuit courts of the United States, and prosecute the same, with all convenient dispatch to a final determination. [18 Stat. L. 200.]

An act to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act.

[*Act of May 7, 1878, ch. 96, 20 Stat. L. 56.*]

[*Preamble.*] Whereas, on the first day of July, anno Domini eighteen hundred and sixty-two, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes"; and

Whereas afterward, on the second day of July, anno Domini eighteen hundred and sixty-four, Congress passed an act in amendment of said first-mentioned act; and

Whereas the Union Pacific Railroad Company, named in said acts, and under the authority thereof, undertook to construct a railway, after the passage thereof, over some part of the line mentioned in said acts; and

Whereas, under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, undertook to construct a railway, after the passage of said acts, over some part of the line mentioned in said acts; and

Whereas the United States, upon demand of said Central Pacific Railroad Company, have heretofore issued, by way of loan and as provided in said acts, to and for the benefit of said company, in aid of the purposes named in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half yearly, to the amount of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars, which said bonds have been sold in the market or otherwise disposed of by said company; and

Whereas the said Central Pacific Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas, after the passage of said acts, the Western Pacific Railroad Company, a corporation then existing under the laws of California, did, under the authority of Congress, become the assignee of the rights, duties and obligations of the said Central Pacific Railroad Company, as provided in the act of Congress passed on the third of March, anno Domini eighteen hundred and sixty-five, and did, under the authority of the said act and of the acts aforesaid, construct a railroad from the city of San Jose to the city of Sacramento, in California, and did demand and receive from the United States the sum of one million nine hundred and seventy thousand five hundred and sixty dollars of the bonds of the United States, of the description before mentioned as issued to the Central Pacific Company, and in the same manner and under the provisions of said acts; and upon and in respect of the bonds so issued to both said companies, the United States have paid interest to the sum of more than thirteen and a half million dollars, which has not been reimbursed; and

Whereas said Western Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States to it, and secured the same by mortgage, which are, if lawfully issued and disposed of, a prior and paramount lien to that of the United States, as stated and secured thereby; and

Whereas said Western Pacific Railroad Company has since become merged in, and consolidated with, said Central Pacific Railroad Company, under the name of the Central Pacific Railroad Company, whereby the said Central Pacific Railroad Company has become liable to all the burdens, duties, and obligations before resting upon said Western Pacific Railroad Company; and divers other railroad companies have been merged in and consolidated with said Central Pacific Railroad Company; and

Whereas the United States, upon the demand of the said Union Pacific Railroad Company, have heretofore issued by way of loan to it and as provided in said acts, the bonds of the United States, payable in thirty years from the date

thereof, with interest at six per centum per annum, payable half-yearly, the principal sums of which amount to twenty-seven million two hundred and thirty-six thousand five hundred and twelve dollars; on which the United States have paid over ten million dollars interest over and above all reimbursements; which said bonds have been sold in the market or otherwise disposed of by said corporation; and

Whereas said corporation has issued and disposed of an amount of its own bonds equal to the amounts so issued to it by the United States as aforesaid, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of the said Central Pacific Company, amount in the aggregate to more than ninety-six million dollars, and those of the said Union Pacific Railroad Company to more than eighty-eight million dollars; and

Whereas the United States, in view of the indebtedness and operations of said several railroad companies respectively, and of the disposition of their respective incomes, are not and cannot, without further legislation, be secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies respectively, as mentioned in said act of eighteen hundred and sixty-two, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of eighteen hundred and sixty-two be altered and amended as hereinafter enacted; and

Whereas, by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of eighteen hundred and sixty-four for the amendment and alteration thereof ought also to be exercised as hereinafter enacted: Therefore,

[SEC. 1.] [*Net earnings, how ascertained.*] That the net earnings mentioned in said act of eighteen hundred and sixty-two, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of eighteen hundred and sixty-four, as well as of said act of eighteen hundred and sixty-two. This section shall take effect on the thirtieth day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto. [20 Stat. L. 58.]

Construed with earlier Acts.—The Acts of July 1, 1862, July 2, 1864, and May 7, 1878, all relate to the same subject. The latter Act is declared by its title to be amendatory of the first two, and its last section provides that each and every of its provisions shall be "held as in alteration and amendment" of the two Acts first mentioned. The three Acts are therefore to be construed together as one Act, and one part to be interpreted

by another. *U. S. v. Central Pac. R. Co.*, (1886) 118 U. S. 237.

Validity of Act.—Taken prospectively this Act is to be regarded as valid under the decision in *Sinking-Fund Cases*, (1878) 99 U. S. 700; *U. S. v. Central Pac. R. Co.*, (1890) 140 U. S. 702.

The words "necessary expenses of operating" extend to the expenses of operating the road in accordance with the demands of the

business coming to it, but limit the expenses to such as are conducive to that end and exclude those that are not. The Act accords with the rule previously laid down by the Supreme Court (99 U. S. 402). *Union Pac. R. Co. v. U. S.*, (1885) 20 Ct. Cl. 70, *affirmed* (1886) 117 U. S. 355.

The "earnings" of the road include all the receipts arising from the company's operations as a railroad company, but not those from the public lands granted, nor fictitious receipts for the transportation of its own property. "Net earnings," within the meaning of the law, are ascertained by deducting from the gross earnings all the ordinary expenses of organizations and of operating the road and the expenditures made *bona fide* in improvements and paid out of earnings, and not by the issue of bonds or stock; but not deducting interest paid on any of the bonded debt of the company. *Union Pac. R. Co. v. U. S.*, (1878) 99 U. S. 402. See also *U. S. v. Central Pac. R. Co.*, (1878) 99 U. S. 449.

What expenditures to be deducted.—In the case of the *Union Pac. R. Co. v. U. S.*, (1878) 99 U. S. 402, the Supreme Court decided that under the Act of 1862 in determining the net earnings there was to be deducted from the gross earnings expenditures which the company had actually paid

out of its earnings for the following objects: 1, station buildings; 2, shops and fixtures; 3, equipment; 4, government commissioners; 5, fencing; 6, snow sheds and fences; 7, express outfit; 8, engineering; 9, bridging; 10, car shops and sheds; 11, roadway and track; 12, hotels; 13, tenements; 14, coal sheds; 15, Omaha depot buildings; 16, Omaha general offices; 17, real estate; 18, Laramie rolling mill; 19, waterworks. *Union Pac. R. Co. v. U. S.*, (1885) 20 Ct. Cl. 70.

Expenses for betterments, etc.—In arriving at the net earnings of the railroad company certain expenses which were not for current expenses and repairs, but were for betterments and improvements on the road, its buildings and equipments, whereby the capital of the company invested in its works was increased in permanent value, may not be allowed under the provisions of the Thurman Act. *U. S. v. Central Pac. R. Co.*, (1890) 140 U. S. 702.

Interest on "Omaha bridge bonds."—Interest on the bonds issued by the Union Pacific Railroad Company under the Act of Feb. 24, 1871, ch. 67, commonly known as the "Omaha bridge bonds," is not to be deducted from the gross earnings of that company in ascertaining its net earnings. (1879) 16 Op. Atty-Gen. 240.

SEC. 2. [*Compensation from United States to be retained, etc.*] That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking-fund herein-after provided for the uses therein mentioned. [20 Stat. L. 58.]

Purpose of section.—These and other provisions indicate the extent to which Congress deemed it necessary to make provision for the protection of the United States against liability on its bonds loaned to railroad companies for the purposes indicated in the Act of 1862. The security taken by the government was of course impaired by the Act of 1864, which subordinated the lien of the United States as originally declared to the first mortgages executed by the respective companies under the authority of that Act. *U. S. v. Stanford*, (1896) 161 U. S. 412.

Reason for Act.—By a prior decision (*U. S. v. Union Pac. R. Co.*, (1875) 91 U. S. 72) it was held that the company did not have to pay interest until the bonds issued by the government matured, except so far as the Act enabled the government to withhold one-half the compensation for transportation performed for it and five per cent. of the net earnings. Out of this situation and on account of the action of the railroads grew the Thurman Act, and its cause and justification appear in the remarks of Chief Justice Waite in the Sinking-Fund Cases, (1878) 99 U. S. 723; *Southern Pac. R. Co. v. Railroad Com'rs*, (1895) 71 Fed. Rep. 437.

Effect of Act.—The Act of May 7, 1878, merely restored the provisions of the Act of July 1, 1862, and again required all compensation for services rendered the government to be applied to the payment of the bonds. *U. S. v. Central Pac. R. Co.*, (1886) 118 U. S. 237..

Statutory right.—The right of the government to withhold moneys due to the Pacific railroads for services rendered, and apply them upon the subsidy bonds loaned the roads (not yet due), rests not upon any general principle of law, but upon the statute. *Pacific Railroad Cases*, (1880) 16 Ct. Cl. 353.

Personal liability of stockholders.—The important fact disclosed by the Pacific Railroad Acts is that no one of them contains any clause imposing upon the stockholders of a corporation receiving subsidy bonds personal responsibility for any debt due to the United States from such corporation by reason of its failure to pay those bonds at maturity. It was, of course, competent for Congress when incorporating the Union Pacific Railroad Company to impose such liability on the stockholders of that corporation. But, as it did not do so, as the personal

liability of stockholders for the debts of the corporation arises only from statute, it cannot be claimed, nor is it claimed, that the stockholders of that corporation incurred by their subscriptions of stock any liability to the United States or to any other creditor for the debts of that company. They were bound, of course, to make good the amount of their subscriptions; but that being done, their personal responsibility to creditors of the corporate body ceased. *U. S. v. Stanford*, (1896) 161 U. S. 412.

Services rendered by nonaided road.—The compensation for services rendered the United States, which by this section was required to be applied to the payment of the same bonds, does not include compensation for services rendered by a road the construction of which has not been aided by the issue to the company of government bonds. *U. S. v. Central Pac. R. Co.*, (1886) 118 U. S. 237, *affirming* 21 Ct. Cl. 80. See also *U. S. v. Kansas Pac. R. Co.*, (1878) 99 U. S. 455.

To what companies applicable.—This section applies only to the companies named in the Act. (1899) 22 Op. Atty-Gen. 396.

The "several companies" referred to in this section cannot be considered to be any other than the companies to which the Act in its terms applies. *Pacific Railroad Cases*, (1880) 16 Ct. Cl. 353.

The only companies intended to be affected by the Act were manifestly the Union Pacific and the Central Pacific. *Pacific Railroad Cases*, (1880) 16 Ct. Cl. 353.

These provisions apply not only to the Union Pacific division but also to the 293½ miles of the Kansas Pacific division which were aided by the government. They do not apply to the other 245½ miles of said road, nor to the Denver Pacific division. *Union Pac. R. Co. v. U. S.*, (1885) 20 Ct. Cl. 70.

The bonds referred to in this section are plainly those which had been issued to the Union Pacific and Central Pacific companies and no other. *Pacific Railroad Cases*, (1880) 16 Ct. Cl. 353.

The Sioux City and Pacific Railroad Company is not within the scope of the Sinking Fund Act. (1886) 18 Op. Atty-Gen. 503.

Kansas Pacific Company.—This Act relates only to the Union and Central Pacific roads, and does not extend to earnings by the road of the Kansas Pacific Company. *Pacific Railroad Cases*, (1880) 16 Ct. Cl. 353.

Effect of consolidation.—When the Kansas Pacific became consolidated with the Union Pacific the pre-existing legal relations of the former with the government remained unchanged as to compensation for services performed either before or after the consolidation. *Pacific Railroad Cases*, (1880) 16 Ct. Cl. 353.

Effect of foreclosure and sale.—One-half of the compensation due from time to time for the services rendered by the Central branch road for the government should be withheld and applied upon the bonds issued by the United States in aid of its con-

struction, notwithstanding the foreclosure and sale of the same. (1899) 22 Op. Atty-Gen. 396.

Same services as in prior Acts.—The words "the whole amount of compensation which may from time to time be due to said several railroad companies respectively for services rendered for the government," were intended to apply only to the same services mentioned in the former Acts and were not used for the purpose of introducing a new and additional service not contemplated by those Acts. *Central Pac. R. Co. v. U. S.*, (1886) 21 Ct. Cl. 180, *affirmed* in (1886) 118 U. S. 235.

Railroad, telegraph, and bridge service.—The requirement that one-half of the compensation for services rendered for the government by that company should be applied to the payment of the bonds issued by the government thereto, embraces not only railroad and telegraph service, but bridge service also. (1873) 14 Op. Atty-Gen. 232.

Transportation for quartermaster's department over aided and nonaided roads.—Under this section all compensation due for transportation for the quartermaster's department performed over such portions of the Union and Central Pacific railroads as were built with the aid of the government bonds should be retained. And all compensation due to the same roads (they being indebted to the United States upon subsidy bonds) for such transportation performed over those portions of roads owned, leased, controlled, and operated thereby which were not built with the aid of government bonds, be also retained, so that the question involved as to such portions of roads can be judicially determined. This advice was also given on similar grounds in regard to compensation due for transportation performed over the Kansas Pacific, Denver Pacific, and Union Pacific consolidated, and in regard to compensation due for transportation performed over the Sioux City and Pacific and the Central branch Union Pacific railroads and over lines owned, leased, controlled, and operated thereby. (1880) 16 Op. Atty-Gen. 516.

Mail service.—This provision is very comprehensive. It includes all mail service, special or other, which may be rendered by the company, either under contract or otherwise, and it forbids a cash payment thereto of any allowance for such service. (1882) 17 Op. Atty-Gen. 393.

Contract for special mail facilities.—If a contract is concluded with the Union Pacific Railway Company for special mail facilities, to be paid out of the so-called special facilities appropriation, the allowance cannot be put in cash, but must be passed to the credit of the company as the regular mail pay is now credited. (1882) 17 Op. Atty-Gen. 393.

Effect of transfer of telegraph lines.—It is clear under the Acts of 1862, 1864, and 1878 that the government was entitled to retain and apply as directed by Congress all sums due on account of services rendered in its behalf by any railroad company named in those Acts that had received the aid of the United States in the construction of its

railroad and telegraph lines. All such sums were set apart by Congress for the payment of the principal and interest of any bonds delivered by the United States to such company. The government could therefore have retained and applied, as in the Act of Congress required, all sums due from it on account of messages sent or received by it over the telegraph line constructed by the Union Pacific Railroad Company. *Sinking Fund Cases*, (1878) 99 U. S. 700. No agreement between the company and the Western Union Telegraph Company transferring to the latter the control of the telegraph line constructed by the railroad company should affect the right of the United States. *U. S. v. Western Union Tel. Co.*, (1895) 160 U. S. 53.

Telegraph line managed by another company.—One-half of the compensation chargeable for sending government dispatches over the telegraph line along the Kansas Pacific railroad should be retained and applied to the payment of the bonds issued by the United States in aid of that railroad, notwithstanding the circumstance that at the time the dispatches were sent the line was managed and operated by the Western Union Telegraph Company, and the service was rendered directly to the government by this company. (1873) 14 Op. Atty-Gen. 313.

Telegraph messages over two lines.—Although the United States is entitled to retain

and apply as directed by Congress all sums due from the government on account of the use by the telegraph company for public business of the telegraph line constructed by the railroad company, yet where there is an entire absence of proof as to the extent to which that line was in fact so used, and where it is impossible to ascertain the amount improperly paid to and without right retained by the telegraph company and subsequently divided between it and the railroad company, from the fact that the messages may have been sent over either the railroad line or the line constructed by and belonging to a telegraph company, sums paid by the United States to the telegraph company cannot be recovered by the United States. *U. S. v. Western Union Tel. Co.*, (1495) 160 U. S. 53.

Funds applied to earliest debts.—Applying the familiar rule that in case of payments by a debtor to a creditor upon distinct transactions for distinct accounts when neither party makes an appropriation at the time, the payments are applied by law to liabilities of earliest date; the sums applicable in any one year to the payment of the company's interest debts for that year must be applied in the order in which such debts arise, and the fact that bonds have been issued at various times is of no consequence. (1895) 21 Op. Atty-Gen. 145.

SEC. 3. [*Sinking fund—investment.*] That there shall be established in the Treasury of the United States a sinking-fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States. All the bonds belonging to said fund shall, as fast as they shall be obtained, be so stamped as to show that they belong to said fund, and that they are not good in the hands of other holders than the Secretary of the Treasury until they shall have been indorsed by him, and publicly disposed of pursuant to this act. [20 Stat. L. 58.]

Constitutionality.—A legislative regulation which does no more than require the companies to submit to their just contribution towards the payment of a bonded debt cannot in any sense be said to deprive them of their property without due process of law. *Sinking-Fund Cases*, (1878) 99 U. S. 700.

So far as it establishes in the treasury of the United States a sinking fund, this Act is not unconstitutional. *Sinking-Fund Cases*, (1878) 99 U. S. 700.

The establishment of the fund is a reasonable regulation of the administration of the affairs of the companies, promotive alike of the interests of the public and of the corporations, and is warranted under the authority which Congress has by way of amendment to change or modify the rights, privi-

leges, and immunities granted by it. *Sinking-Fund Cases*, (1878) 99 U. S. 700.

What investments permissible.—Money paid into the sinking fund of said companies under this Act may be invested (1) in United States bonds; (2) in any United States railroad subsidy bonds of any of the aided railroads described in the Act of July 1, 1862, ch. 120, and its supplements; and (3) in any of the first mortgage bonds of said companies such as are described in section 5 of the Act of March 3, 1887, ch. 345. (1887) 18 Op. Atty-Gen. 598.

Deposit and investment not payment.—The debt of the respective companies therein named to the United States is not paid by depositing and investing the fund in the manner prescribed by that Act. *Sinking-Fund Cases*, (1878) 99 U. S. 700.

SEC. 4. [*Credits to, and payments into, sinking fund.*] That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of one million two hundred thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad-company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding. That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Union Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of eight hundred and fifty thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding. [*20 Stat. L. 59.*]

How much added.—The annual payment into the sinking fund prescribed by this section adds to the five per cent. of net earnings prescribed by the Act of 1862 so much of \$850,000 as will make, with the five per cent. and with the compensation for services performed for the government, an amount equal to twenty-five per cent. of the net earnings of the road and no more. *Union Pac. R. Co. v. U. S.*, (1885) 20 Ct. Cl. 70, *affirmed* (1886) 117 U. S. 355.

Government not released from payment.—Retaining in the fund the one-half of the earnings for services rendered to the government by the respective companies which, by the Act of July 2, 1864 (13 Stat. L. 356), was to be paid does not release the government from such payment. Although kept in the treasury the fund is owned by them, and they will be entitled to the securities whereof it consists which remain undisposed of when the debts chargeable upon it shall be paid. Under the circumstances, such retaining is, in law, a payment to them. *Sinking-Fund Cases*, (1878) 99 U. S. 700.

Liquidation of company's debts.—The one-half of the earnings of the company on government business and its yearly payments of five per cent. of its net profits cannot be treated as having liquidated the whole or any part of the company's indebtedness on account of the principal of the subsidy bonds maturing Jan. 16, 1895, but on the other hand, must be regarded as paying interest debts exclusively. (1895) 21 Op. Atty-Gen. 145.

Intervention by government in proceeding to restrain execution of state freight laws.—The payment of twenty-five per cent. of net earnings under this Act gives the government such interest as entitles it to intervene in a proceeding to restrain the execution of an order and resolution of a state board of railway commissioners fixing certain rates for freights. The extent of such interest is that the rates so fixed shall be reasonable. *Southern Pac. R. Co. v. Railroad Com'rs*, (1895) 71 Fed. Rep. 437.

SEC. 5. [*Secretary of Treasury to remit into sinking fund percentage on net earnings.*] That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury, by either of said companies, that seventy-five per centum of its net earnings as hereinbefore defined, for any current year are or were insufficient to pay the interest for such year upon the obligations of such

company, in respect of which obligations there may exist a lien paramount to that of the United States, and that such interest has been paid out of such net earnings, said Secretary is hereby authorized, and it is made his duty, to remit for such current year so much of the twenty-five per centum of net earnings required to be paid into the sinking-fund, as aforesaid, as may have been thus applied and used in the payment of interest as aforesaid. [20 Stat. L. 59.]

To what moneys applicable. — This section applies to moneys belonging to those funds which are uninvested, and such moneys may

be invested as therein provided. (1887) 18 Op. Atty.-Gen. 598.

SEC. 6. [*Dividends in case of default, illegal — penalty.*] That no dividend shall be voted, made, or paid for or to any stockholder or stockholders in either of said companies respectively at any time when the said company shall be in default in respect of the payment either of the sums required as aforesaid to be paid into said sinking-fund, or in respect of the payment of the said five per centum of the net earnings, or in respect of interest upon any debt the lien of which, or of the debt on which it may accrue, is paramount to that of the United States; and any officer or person who shall vote, declare, make, or pay, and any stockholder of any of said companies who shall receive any such dividend contrary to the provisions of this act, shall be liable to the United States for the amount thereof, which, when recovered, shall be paid into said sinking-fund, and every such officer, person, or stockholder who shall knowingly vote, declare, make, or pay any such dividend, contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding ten thousand dollars, and by imprisonment not exceeding one year. [20 Stat. L. 59.]

SEC. 7. [*Application of sinking fund.*] That the said sinking-fund so established and accumulated shall, at the maturity of said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed, subject to the provisions of the next section. [20 Stat. L. 60.]

SEC. 8. [*Priorities in application of sinking fund.*] That said sinking-fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking-fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking-fund may be entitled thereto in due order; but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of any of said companies respectively, nor to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States. [20 Stat. L. 60.]

SEC. 9. [*Lien on property of companies.*] That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury,

or into said sinking-fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed, assets, and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon. But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property or assets in the ordinary, proper and lawful course of their current business, in good faith and for valuable consideration. [20 Stat. L. 60.]

SEC. 10. [*Enforcement of rights of United States.*] That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceeding against the said several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceeding already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to. [20 Stat. L. 60.]

SEC. 11. [*Forfeiture of franchises on failure to comply with this Act.*] That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced. [20 Stat. L. 60.]

SEC. 12. [*Alteration, amendment, or repeal of Act.*] That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal, as, in the opinion of Congress, justice or the public welfare may require. And nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States. [20 Stat. L. 60.]

Power of Congress. — To the extent of the powers, rights, privileges, and immunities thereby granted, Congress retains the right of amendment, and by exercising it may in a manner not inconsistent with the original charter granted by California, as modified by

the Act of that state passed in 1864, accepting what has been done by Congress, regulate the administration of affairs of the company in reference to the debts created by it under authority of such legislation. *Sinking-Fund Cases*, (1878) 99 U. S. 700.

SEC. 13. [*Act deemed as amendatory.*] That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of eighteen hundred and sixty-two and of said act of eighteen hundred and sixty-four respectively, and of both said acts. [20 Stat. L. 60.]

An act authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes.

[Act of March 3, 1887, ch. 345, 24 Stat. L. 458.]

[SECS. 1-3.] [Temporary.]

These sections relate to a temporary commission for the investigation of certain railroads.

SEC. 4. [*Protection of interests of United States — redemption of prior incumbrances.*] That whenever, in the opinion of the President, it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage, or other interest in any of the property of any or all of the several companies upon which a lien, mortgage, or other incumbrance paramount to the right, title, or interest of the United States for the same property, or any part of the same, may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage, or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury; and the United States shall thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien, or other incumbrance in respect of which such payment shall have been made. It shall be the duty of the Attorney-General, under the direction of the President, to take all such steps and proceedings, in the courts and otherwise, as shall be needful to redeem such lien, mortgage, or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in this section mentioned, and to take steps to foreclose any mortgages or liens of the United States on any such railroad property. [24 Stat. L. 491.]

SEC. 5. [*Sinking funds — investment.*] That the sinking-funds which are or may be held in the Treasury for the security of the indebtedness of either or all of said railroad companies may, in addition to the investments now authorized by law, be invested in any bonds of the United States heretofore issued for the benefit of either or all of said companies, or in any of the first-mortgage bonds of either of said companies which have been issued under the authority of any law of the United States and secured by mortgages of their roads and franchises, which by any law of the United States have been made prior and paramount to the mortgage, lien, or other security of the United States in respect of its advances to either of said companies as provided by law. [24 Stat. L. 492.]

[SEC. 1.] [*Transportation for government by bond-aided railroads.*] * * * That no money shall hereafter be paid to any railroad company for the transportation of any property or troops of the United States over any railroad which in whole or in part was constructed by the aid of a grant of public land on the condition that such railroad should be a public highway for the use of the Government of the United States free from toll or other charge, or upon any other conditions for the use of such road, for such transportation; nor shall any allowance be made for the transportation of officers of the Army over any such road when on duty and under orders as military officers of the United States. But nothing herein contained shall be construed as preventing any such railroad from bringing a suit in the Court of Claims for the charges for such transportation, and recovering for the same if found entitled thereto by virtue of the laws in force prior to the passage of this act; provided that

the claim for such charges shall not have been barred by the statute of limitations at the time of bringing the suit, and either party shall have the right of appeal to the Supreme Court of the United States; *And provided further*, That the foregoing provision shall not apply for the current fiscal year, nor thereafter, to roads where the sole condition of transportation is that the company shall not charge the Government higher rates than they do individuals for like transportation, and when the Quartermaster-General shall be satisfied that this condition has been faithfully complied with. [18 Stat. L. 453.]

This is from the Army Appropriation Act of March 3, 1875, ch. 133.

[Settlement of accounts for Army and mail transportation.] * * *

That for the proper adjustment of the accounts of the Union Pacific, Central Pacific, Kansas Pacific, Western Pacific, and Sioux City and Pacific Railroad Companies, respectively, for services which have been or may be hereafter performed for the government for transportation of the Army and transportation of the mails, the Secretary of the Treasury is hereby authorized to make such entries upon the books of the department as will carry to the credit of said companies the amounts so earned or to be earned by them during each fiscal year and withheld under the provisions of section fifty-two hundred and sixty of the Revised Statutes and of the act of Congress approved May seventh, eighteen hundred and seventy-eight: *Provided*, That this shall not authorize the expenditure of any money from the Treasury nor change the method now provided by law for the auditing of such claims against the government; *Provided further*, That this paragraph shall not be so construed as to be a disposition of any moneys due or to become due to or from said companies respectively, or to, in any way, affect their rights or duties or the rights of the United States, under existing laws, it being only intended hereby to enable the proper accounting officers to state on the books of the Treasury the accounts between the government and said companies respectively. * * * [20 Stat. L. 420.]

This is from the Deficiencies Appropriation Act of March 3, 1879, ch. 183.

Transportation of enlisted men in navy and marine corps.—The methods adopted in settling accounts for transportation of the army under this Act are not applicable to accounts for the transportation of enlisted men of the navy and marine corps. (1896) 21 Op. Atty.-Gen. 297.

Transportation of supplies, public stores, etc.—This Act applies in terms only to accounts "for transportation of the Army and transportation of the mails." While it may be doubtful whether accounts for the transportation of "munitions of war" come under this Act, it is clear that accounts for transportation of "supplies and public stores" do not. (1896) 21 Op. Atty.-Gen. 297.

[Settlement of accounts for Navy and Marine Corps transportation.] * * *

That the provisions of the clause contained in the Act of Congress approved March third, eighteen hundred and seventy-nine, authorizing the Secretary of the Treasury to make such entries upon the books of the Department as will carry to the credit of certain railroad companies named in said Act amounts earned or to be earned by them during each fiscal year on account of transportation of the Army and transportation of the mails be, and the same are hereby, extended and made applicable to the transportation of the Navy and the Marine Corps. * * * [29 Stat. L. 663.]

This is from the Naval Appropriation Act of March 3, 1897, ch. 386.

[SEC. 1.] [*Payment for Army transportation over land-grant railroads.*]
 * * * For the payment of Army transportation lawfully due such land-grant railroads as have not received aid in government bonds, to be adjusted by the proper accounting officers in accordance with the decisions of the Supreme Court in cases decided under such land-grant acts, but in no case shall more than fifty per centum of the full amount of the service be paid, one hundred and twenty-five thousand dollars: *Provided*, That such compensation shall be computed upon the basis of the tariff rates for like transportation performed for the public at large and shall be accepted as in full for all demands for said services: *And provided further*, That any such land-grant roads as shall file with the Secretary of the Treasury their written acceptance of this provision shall hereafter be paid for like services as herein provided;
 * * * [22 Stat. L. 120.]

This is from the Army Appropriation Act of June 30, 1882, ch. 254.

[SEC. 1.] [*Settlement of accounts for transportation over non-bond-aided lines.*] * * * That the Secretary of the Treasury is hereby authorized and directed to make settlement of the claims growing out of Government transportation over non-bond-aided lines of the Southern Pacific Company and Central Pacific Railroad Company by crediting against the notes of the Central Pacific Railroad Company held in the Treasury of the United States interest on all of said judgment and allowed claims at four per centum per annum, as set forth in his letter to the chairman of the Committee on Appropriations of the Senate, dated May twelfth, nineteen hundred. * * * [31 Stat. L. 1023.]

This is from the Deficiencies Appropriation Act of March 3, 1901, ch. 831.

Sec. 5261. [*Companies may sue in Court of Claims.*] Any such company may bring suit in the Court of Claims to recover the price of such freight and transportation, and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them; and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business. [R. S.]

Act of March 3, 1873, ch. 226, 17 Stat. L. 508.

When right to sue accrues.—The right of one of the Pacific railroads to bring suit for money improperly withheld by the secretary of the treasury as net earnings under the Thurman Act accrues at the time the money is so applied. *Central Pac. R. Co. v. U. S.*, (1889) 24 Ct. Cl. 145.

What included in record sent up.—Special findings which relate to mere incidental facts which amount only to evidence are inadmissi-

ble as part of the record to be sent to the Supreme Court. *Union Pac. R. Co. v. U. S.*, (1885) 116 U. S. 154.

What comes up on appeal.—The facts are to be settled by the Court of Claims, and an appeal brings up for review only the decisions of that court upon questions of law arising in the course of the trial or in the application of the law to the facts as finally found. *Union Pac. R. Co. v. U. S.*, (1885) 116 U. S. 154.

Sec. 5262. [*Circuit Court to issue mandamus, etc.*] The proper circuit court of the United States shall have jurisdiction to hear and determine all cases of mandamus to compel said Union Pacific Railroad Company to operate its road as required by law. [R. S.]

Act of March 3, 1873, ch. 226, 17 Stat. L. 509.

Purpose of Act.—This was an Act which was indispensable in order to give the federal

court original jurisdiction in mandamus, and was passed for that purpose. *U. S. v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 524, 28 Fed. Cas. No. 16,600.

This Act confers original jurisdiction on the proper Circuit Court of the United States of cases of mandamus to compel the Union Pacific Railroad Company to operate its road according to law. *U. S. v. Union Pac. R. Co.*, (1873) 2 Dill. (U. S.) 527, 28 Fed. Cas. No. 16,599.

Specially conferred jurisdiction.—The Circuit Court of the United States can exercise no original jurisdiction by mandamus except when the jurisdiction is specially conferred by an Act of Congress, as was done by this Act. *People v. Colorado Cent. R. Co.*, (1890) 42 Fed. Rep. 638.

In Iowa.—The Circuit Court of the United States for the district of Iowa under the Acts of Congress relating to the Union Pacific Railroad Company has jurisdiction in mandamus to compel that company to operate its road as required by law if any part of the road is in the district of Iowa. *U. S. v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 524, 28 Fed. Cas. No. 16,600.

Jurisdiction outside of state.—No court sitting in one state can by mandamus compel the construction or operation of a railroad in any other state or territory of the Union. Nor can a United States court exercise such a jurisdiction, except it be conferred by Act of Congress in respect of a federal corporation as was done by this Act. *People v. Colorado Cent. R. Co.*, (1890) 42 Fed. Rep. 638.

Service necessary.—This Act gives to the proper Circuit Court jurisdiction in mandamus to compel the Union Pacific Railroad Company to operate its road as required by law. There must be jurisdiction over the company by service upon it to enable the court to exercise the power conferred by the Act. *Hall v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 515, 11 Fed. Cas. No. 5,950.

When private persons may move for writ.—Throughout the legislation of Congress respecting the Union Pacific Railroad Company, the fact is recognized that it sustains a special or peculiar relation to the United States in their political capacity and also a relation to the people at large or the general public. Now, as far as the company owes duties to the general government of a nature to be enforced by mandamus, it is clear that private persons cannot institute or set on foot the proceedings. This would be a duty devolved upon the attorney-general by express enactment, or resulting from his station. And where the duty charged to be neglected by the company is one which concerns the public at large as distinguished from the government, the attorney-general, in his official capacity, alone, or on the relation of private persons, might file the necessary suggestion or affidavits and move for the writ. But where the duty said to be neglected is one which the company owes to the public, and where individuals who suffer from such neglect complain of it, the court must not refuse the writ solely because the attorney-general does not move for it. *Hall v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 515, 11 Fed. Cas. No. 5,950, *affirmed* (1875) 91 U. S. 343.

A private person whose rights are affected in common with those of the public may, without the intervention of the attorney-general, move for a mandamus to compel a railroad company to operate its road as required by law. *People v. Colorado Cent. R. Co.*, (1890) 42 Fed. Rep. 638.

Private persons who suffer damage and inconvenience from the failure of the company to operate its road as required by law may institute proceedings under this Act without the sanction of the attorney-general. *Hall v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 515, 11 Fed. Cas. No. 5,950.

What private person must show.—When a private person moves for a mandamus "on behalf of the people of the state," he must show that he is one of them and that his interests as a citizen of the state are injuriously affected by the wrong complained of. *People v. Colorado Cent. R. Co.*, (1890) 42 Fed. Rep. 638.

If private persons can show that they are interested in the operation of the road, they have a right to come into court under this Act and call the company to account for failing to perform its public duty, to their injury. *U. S. v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 524, 28 Fed. Cas. No. 16,600.

Effect of void lease.—If a lease is void it imposes no obligation upon a railroad company as lessee to operate the road leased. *People v. Colorado Cent. R. Co.*, (1890) 42 Fed. Rep. 638.

To whom writ may go.—The writ of mandamus may go to the corporation, to the corporate body, and command it to perform its duty (granting that any part of the road is in this district), and if the writ thus commanding this duty is served upon the chief officer of the corporation, its president, or upon any officer who may be indicted and criminally punished if he fails to do his duty in this respect, then the court has jurisdiction over the company and its officers by mandamus to compel the performance of this duty. *U. S. v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 524, 28 Fed. Cas. No. 16,600.

Operation of bridge.—In *U. S. v. Union Pac. R. Co.*, (1875) 4 Dill. (U. S.) 479, 28 Fed. Cas. No. 16,601, a peremptory mandamus to compel the Union Pacific Railroad Company to operate its road over the bridge in the same general manner that it operates the other portions of the road was granted, and the device of a separate transfer over the bridge by local trains was held to be in violation of the duty of the company to the public.

Effect of Act upon eastern terminus of Iowa branch.—This Act, construed in connection with the other legislation of Congress, does not change the eastern terminus of the Iowa branch of the Union Pacific Railroad Company from the Iowa shore of the Missouri river nor disconnect the bridge from the road of the company, so as to relieve the company from the duty imposed by its charter and other Acts of Congress to operate its whole railroad as "one continuous line." *U. S. v. Union Pac. R. Co.*, (1875) 4 Dill. (U. S.) 479, 28 Fed. Cas. No. 16,601.

An act making additions to the fifteenth section of the act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes' approved July 1, 1862."

[Act of June 20, 1874, ch. 331, 18 Stat. L. 111.]

[*Pacific railroads and telegraph lines to be used as continuous lines with equal facilities to all.*] That there shall be, and is hereby, added to the fifteenth section of the act approved July second, eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes,' approved July first, eighteen hundred and sixty-two," the following words, namely: "And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act is amendatory, the party injured or the company aggrieved may bring an action in the district or circuit court of the United States in the Territory, district, or circuit in which any portion of the road of the defendant may be situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares collected by the defendant, and for treble the amount of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act, a new cause of action shall arise; and in case of suit in any such Territory, district, or circuit, process may be served upon any agent of the defendant found in the Territory, district, or circuit in which such suit may be brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March third, eighteen hundred and sixty-nine. [18 Stat. L. 111.]

General construction.—This Act enjoins the duty to operate the road as one continuous line, upon the officers engaged in operating the road; if they refuse to do so, they are made indictable. The duty to be performed by them is one which rests upon the officers as well as the corporation; otherwise Congress would not have made it criminal for the officers to refuse to discharge it. It is their duty to obey the law; if they fail, they may be proceeded against crim-

inally, and the public duty may be enforced by mandamus, and this writ may be directed to the corporation and served as required by the Act. *U. S. v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 524, 28 Fed. Cas. No. 16,600.

Personal liability of officers.—This Act makes it the personal duty of the officers of the road to operate it as one continuous line. Now, if it can be shown that the president of the road is not operating it as a continuous line within the meaning of this Act

of Congress, then he is guilty and may be punished, and for the violation of the Act in this respect he cannot be protected by any resolution of the board of directors. *U. S. v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 524, 28 Fed. Cas. No. 16,600.

What is eastern terminus of Iowa branch of Union Pacific. — The charter of the Union Pacific Railroad Company (12 Stat. L. 489, sec. 12) required its Iowa branch to be constructed westward from a point on the western boundary of the state of Iowa to be fixed by the President of the United States. It was held, on a consideration of various provisions of the charter, that the eastern terminus of said branch was on the Iowa shore of the Missouri river and not on the Nebraska shore nor at a point "on the middle of the main channel" of the river, although that was the legal western boundary of the state of Iowa. *U. S. v. Union Pac. R. Co.*, (1875) 4 Dill. (U. S.) 479, 28 Fed. Cas. No. 16,601. See also *Union Pac. R. Co. v. Hall*, (1875) 91 U. S. 343.

The right to establish a bridge across the Missouri river to the eastern terminus of the Iowa branch on the Iowa shore was given to the Pacific Railroad Company by implication in the original charter of the company, and was expressly conferred by the ninth section of the amended charter of the company of July 2, 1864 (13 Stat. L. 356). The powers given and the duties imposed by those Acts in respect to bridges were recognized, increased, and regulated, but not repealed, by the special Act of Feb. 24, 1871, entitled

"An Act to authorize the Union Pacific Railroad Company to issue its bond to construct a bridge across the Missouri river at Omaha, Nebraska, and Council Bluffs, Iowa." *U. S. v. Union Pac. R. Co.*, (1875) 4 Dill. (U. S.) 479, 28 Fed. Cas. No. 16,601.

Change in route to Denver. — The Act of March 3, 1869, authorized the corporation then known as the Union Pacific eastern division to contract with the Denver Pacific, a Colorado corporation, for the construction of that portion of its line between Denver and Cheyenne (hereby clearly recognizing the validity of the change of location), to adopt its road-bed, to grant the Denver Pacific a "perpetual use of its right of way and depot grounds, and to transfer to it all the rights and privileges subject to all the obligations appertaining to such part of its line." Even supposing that the Act of 1866 did not upon its face authorize the change that was actually made, — that is, westwardly to Cheyenne by the way of Denver, — it is clear that by the Act of March 3, 1869, this line was recognized as a proper compliance with the Act of 1866 and as a valid and continuous line from Kansas City to Cheyenne. *U. S. v. Union Pac. R. Co.*, (1893) 148 U. S. 562.

Service of process in Iowa. — Under this Act service of process may be made upon the president or general superintendent of the company found in the district of Iowa. *U. S. v. Union Pac. R. Co.*, (1875) 3 Dill. (U. S.) 524, 28 Fed. Cas. No. 16,600.

An act to create an Auditor of Railroad Accounts and for other purposes.

[Act of June 19, 1878, ch. 316, 20 Stat. L. 169.]

[SEC. 1.] [*Repeal of provisions requiring certain reports from railroad companies.*] That section twenty of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes", approved July first anno Domini eighteen hundred and sixty-two, and the act entitled "An act relative to filing reports of railroad companies" approved June twenty-fifth, anno Domini eighteen hundred and sixty-eight, be, and the same are hereby, repealed. [20 Stat. L. 169.]

SEC. 2. [*Auditor of railroad accounts.*] That the office of Auditor of Railroad Accounts is hereby established as a bureau of the Interior Department. The said Auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said Auditor shall be, and is hereby, fixed at the sum of five thousand dollars. To assist the said Auditor to perform the duties of said office, the Secretary of the Interior shall appoint one bookkeeper at an annual salary of two thousand four hundred dollars, one assistant bookkeeper at an annual salary of two thousand dollars, one clerk at an annual salary of one thousand four hundred dollars, and one copyist at an annual salary of nine hundred dollars. Actual and necessary traveling and other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of two

thousand dollars per annum; and it is hereby specially provided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said Auditor or any person acting under his direction. Incidental expenses for books, stationery and other material necessary for the use of said bureau are hereby allowed not to exceed the sum of seven hundred dollars per annum. * * * [20 Stat. L. 169.]

The omitted part of the section makes temporary appropriation.

The title of "Auditor of Railroad Accounts" was changed to "Commissioner of Railroads" by Act of March 3, 1881, ch. 130, *infra*, p. 752. Termination of office, see Act of June 28, 1902, ch. 1301, *infra*, p. 752.

Inadequate appropriation for salary. — Where one statute establishes the salary of

an officer at \$5,000 and another appropriates only \$3,600 therefor, and the latter contains no provision repealing Acts inconsistent and none declaring that payment of the amounts appropriated shall be in full compensation, it is simply a case of inadequate appropriation, and the officer can recover the difference. *French's Case*, (1880) 16 Ct. Cl. 419.

SEC. 3. [*Duties of auditor.*] That the duties of the said Auditor under and subject to the direction of the Secretary of the Interior shall be, to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are enforced; to furnish such information to the several departments of the government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the government; and to make an annual report to the Secretary of the Interior, on the first day of November, on the condition of each of said railroad companies, their roads, accounts, and affairs, for the fiscal year ending June thirtieth immediately preceding. [20 Stat. L. 170.]

See note to section 2, *supra*.

SEC. 4. [*Aided railroads to make reports and submit books for inspection, etc.*] That each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said Auditor any and all such reports as he may require from time to time and shall submit its books and records to the inspection of said Auditor or any person acting in his place and stead, at any time that the said Auditor may request, in the office where said books and records are usually kept; and the said Auditor, or his authorized representative, shall make such transcripts from the said books and records as he may desire. [20 Stat. L. 170.]

Railroads aided by states. — This Act does not apply to railroad companies incorporated in a state with the aid of lands which were granted by Acts of Congress to the state to

be disposed of by its legislature for purposes of such aid and for no other purpose. *U. S. v. Chicago, etc.*, R. Co., (1895) 69 Fed. Rep. 89, *affirmed* (C. C. A. 1897) 77 Fed. Rep. 732.

SEC. 5. [*Penalty for neglect, etc.*] That if any railroad company aforesaid shall neglect or refuse to make such reports as may be called for, or refuse to submit its books and records to inspection, as provided in section four of this

act, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand nor more than five thousand dollars, to be recovered by the Attorney-General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of the Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney-General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced. [20 Stat. L. 170.]

SEC. 6. [*Act to apply to assignees of such companies.*] This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies. [20 Stat. L. 170.]

SEC. 7. [*When Act takes effect.*] This act shall take effect on and after the first day of July, anno Domini eighteen hundred and seventy-eight. [20 Stat. L. 171.]

[SEC. 1.] [*Commissioner of Railroads.*] * * * Office of Auditor of Railroad Accounts. — For Auditor, who shall hereafter be styled Commissioner of Railroads, * * * [21 Stat. L. 409.]

This is from the Legislative, Executive, and Judicial Appropriation Act of March 3, 1881, ch. 130.

[SEC. 1.] [*Termination of office.*] * * * That the office of Commissioner of Railroads is hereby continued until the thirtieth day of June, nineteen hundred and three, when the same shall terminate, and the duties of the Commissioner shall be transferred to the Secretary of the Interior together with the records and files of the office. [32 Stat. L. 456.]

This is from the Sundry Civil Appropriation Act of June 28, 1902, ch. 1301. It supercedes a provision of the Act of April 17, 1900, ch. 192, 31 Stat. L. 125, terminating the office

June 30, 1901, and a provision of the Act of March 3, 1901, ch. 830, 31 Stat. L. 1000, similar to that in the text continuing the office until June 30, 1902.

[II. SAFETY APPLIANCES — REPORT OF ACCIDENTS.]

An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

[Act of March 2, 1893, ch. 196, 27 Stat. L. 531.]

[SEC. 1.] [*Driving-wheel brakes — control of train brakes.*] That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose [27 Stat. L. 531.]

The purpose of this Act is the protection of the lives and limbs of men, and such statutes should be construed to prevent the mischief and advance the remedy. *Chicago, etc., R. Co. v. Voelker*, (C. C. A. 1904) 129 Fed. Rep. 526.

Not for freight protection.—The statutes, state and federal, requiring railroad companies to equip their cars with automatic couplers were not enacted to protect the freight transported therein, but for the protection of the life and limb of the employees who were expected to handle these cars. *Voelker v. Chicago, etc., R. Co.*, (1902) 116 Fed. Rep. 867.

Nature of Act and penalty.—This is a penal statute and it may not be so broadened by judicial construction as to make it cover and permit the punishment of an act which is not denounced by the fair import of its terms. The acts which this statute declares to be unlawful and for the commission of which it imposes a penalty were lawful before its enactment, and their performance subjected to no penalty or liability. It makes that unlawful which was lawful before its passage, and it imposes a penalty for its performance. Nor is this penalty a mere forfeiture for the benefit of the party aggrieved or injured. It is a penalty prescribed by the statute and recoverable by the government. *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

Relation to Interstate Commerce Act.—In one sense this Act is *in pari materia* with the Interstate Commerce Act, and in another not; both relate to the regulation of commerce among the states under the superintendence of the Interstate Commerce Commission. The one deals with the rate and fare, and the other with locomotives and cars; one was intended primarily to protect shippers, the other to protect railroad employees. *U. S. v. Geddes*, (C. C. A. 1904) 131 Fed. Rep. 452.

Locomotives without couplers.—This statute clearly prohibits the use of any engine in moving interstate commerce not equipped

with a power driving-wheel brake and the use of any car not equipped with automatic couplers, under a penalty of \$100 for each offense; and it just as plainly omits to forbid, under that or any penalty, the use of any car which is not equipped with a power driving-wheel brake and the use of any engine that is not equipped with automatic couplers. This striking omission to express any intention to prohibit the use of engines unequipped with automatic couplers raises the legal presumption that no such intention existed, and prohibits the court from importing such a purpose into the Act and enacting provisions to give it effect. The familiar rule that the expression of one thing is the exclusion of others points to the same conclusion. Section 2 of the Act does not declare that it shall be unlawful to use any engine or car not equipped with automatic couplers, but that it shall be unlawful only to use any car lacking this equipment. This clear and concise definition of the unlawful act is a cogent and persuasive argument against the contention that the use, without couplers, of locomotives, hand cars, or other means of conducting interstate traffic, was made a misdemeanor by this Act. *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

Local traffic.—Where a railroad company did all it could to keep its business local, limited its interests so far as it could to the transportation of freight over its own line, made no arrangement for through carriage either way, was interested in none, shared in none, was interested only in its local charge and any arrangement made was with view to secure that, the fact that certain goods transported by it were marked for other states or received from other states did not make it a party to any arrangement for interstate transportation in either direction, nor is such a company engaged in moving interstate traffic within the meaning of this Act. *U. S. v. Geddes*, (C. C. A. 1904) 131 Fed. Rep. 452.

SEC. 2. [Automatic couplers required on all cars.] That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars. [27 Stat. L. 531.]

Under state or federal law.—A defendant railroad company, clearly shown to be a common carrier engaged in interstate commerce by railroad and to be using a car complained of on its line of railroad in moving interstate traffic, is under this Act of Congress and not under the state Act with regard to the condition of the car coupler. *Chicago, etc., R. Co. v. Voelker*, (C. C. A. 1904) 129 Fed. Rep. 526.

Interstate traffic only.—It is not unlawful under this statute for a carrier to haul a car not so equipped which is either used in interstate traffic solely or which is not used in

any traffic at all. *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

What cars included.—Cars loaded with articles shipped to other states, and started, whether in yards, on sidetrack, or in trains, are used in moving interstate traffic. But vacant cars in yards, on sidetracks, in repair shops, or in trains, which are not loaded with, or in use to move, articles of interstate commerce, do not fall within the terms or meaning of the Act. *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

Tender of locomotive.—The word "car" does not include the tender of a locomotive

within the meaning of this Act. *Larabee v. New York, etc., R. Co.*, (1902) 182 Mass. 348.

But in *Philadelphia, etc., R. Co. v. Winkler*, (1903) 4 Penn. (Del.) 387, *affirming* (1902) 4 Penn. (Del.) 80, it was held that the tender of a locomotive engaged in interstate commerce is a car within the general scope of this Act.

Car on sidetrack.—A dining car standing empty on a sidetrack intermediate station, where it has been left by a train engaged in interstate traffic, until it should be taken by another train engaged in the same traffic, going in the opposite direction, and which the owner intended to use in interstate traffic, was drawn by a freight engine from the sidetrack to the turntable, turned, and placed again upon the sidetrack. It was held that the car was not used in moving interstate traffic while it was on the sidetrack and while it was being turned. *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

Sufficient showing of use in interstate traffic.—Whenever cars are designed for interstate traffic the company owning or using them is bound to equip them as required by the Act of Congress; and when it is shown that a railway company is using the car for transportation purposes between states, sufficient is shown to justify the court in ruling that the Act of Congress is applicable to the situation. *Voelker v. Chicago, etc., R. Co.*, (1902) 116 Fed. Rep. 867.

Car from without state.—If a car being moved had come from a point without the state it would be moving interstate commerce, and this is so even though the car to which another was being coupled was not the one used in the interstate traffic, but was being removed as a necessary step in getting at and moving the interstate car. *Winkler v. Philadelphia, etc., R. Co.*, (1902) 4 Penn. (Del.) 80.

Coupling and uncoupling included.—This statute applies the test of whether the person operating the coupler is required to go between the ends of the cars to the act of coupling as well as that of uncoupling, and the concluding phrase is applicable to both acts. *Chicago, etc., R. Co. v. Voelker*, (C. C. A. 1904) 129 Fed. Rep. 526.

Automatic coupling by impact necessary.—A car equipped with a coupler which did not couple automatically by impact, but required men to go between the cars to make the coupling, does not comply with the provisions of this Act. *Winkler v. Philadelphia, etc., R. Co.*, (1902) 4 Penn. (Del.) 80.

Liability of railroad company.—The statutory requirement with respect to equipping cars with automatic couplers was enacted in order to protect railway employees, as far as possible, from the risks incurred when engaged in coupling and uncoupling cars. If a railway uses in its business cars which do not conform to the statutory requirements, either because they never were equipped with automatic couplers, or because the company through negligence has permitted the couplers, originally sufficient, to become worn out and inoperative, then the company is certainly not performing the duty and obliga-

tion imposed upon it by the statute, and is clearly, therefore, chargeable with negligence in thus using an improperly equipped car; and the company is bound to know that if it calls upon one of its employees to make a coupling with a coupler so defective and inoperative that it will not couple by impact, and that to make the coupling the employee must subject himself to all the risks and dangers that inhered in the old and dangerous link and pin method of coupling, it is subjecting such employee to the very risk and danger which it is the purpose of the statute to protect him against so far as that is reasonably possible. *Voelker v. Chicago, etc., R. Co.*, (1902) 116 Fed. Rep. 867.

Negligence per se.—The use of a car which is not equipped as provided by this Act is negligence *per se*. *Philadelphia, etc., R. Co. v. Winkler*, (1903) 4 Penn. (Del.) 387, *affirming* (1902) 4 Penn. (Del.) 80.

When duty to equip arises.—When companies are engaged in interstate traffic it is their duty, under the Act of Congress, not to use in connection with such traffic cars that are not equipped as required by this Act. This duty of proper equipment is obligatory upon the company before it uses the car in connection with interstate traffic, and it is not a duty which only arises when the car happens to be loaded with interstate freight. *Voelker v. Chicago, etc., R. Co.*, (1902) 116 Fed. Rep. 867.

Necessity to keep coupler in repair.—Congress must have intended by this Act that the coupler should be kept in proper repair for use. *Southern R. Co. v. Carson*, (1904) 194 U. S. 140. See also *Carson v. Southern R. Co.*, (1903) 68 S. Car. 55.

Coupler out of repair.—A coupler so out of repair that it required the presence of the body between the ends of the cars, the use of both hands, considerable strength, and more than the usual time, does not satisfy the statute, and constitutes actionable negligence. *Chicago, etc., R. Co. v. Voelker*, (C. C. A. 1904) 129 Fed. Rep. 526.

Couplers of different makes.—The equipment of a car with automatic couplers which will couple automatically with those of the same kind or make, is a compliance with the statute. It does not require cars used in interstate commerce to be equipped with couplers which will couple automatically with cars equipped with automatic couplers of other makes. *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

The preparation of the coupler and the impact are not isolated acts, but connected and indispensable parts of the larger act which is regulated by this statute and the performance of which is intended to be relieved of unnecessary risk and danger. *Chicago, etc., R. Co. v. Voelker*, (C. C. A. 1904) 129 Fed. Rep. 526.

Duty of employee to use couplers.—This Act requiring couplers imposes upon the employee the correlative duty of using these couplers when furnished, and of refraining from unnecessarily going between the ends of the cars to uncouple them. The failure of a servant to discharge this duty, if it directly

contributes to his injury, is fatal to an action for damages on account of the injury. *Gilbert v. Burlington, etc., R. Co.*, (C. C. A. 1904) 128 Fed. Rep. 529.

Calling attention of jury to Act by court. — It was not error on the part of the court to call the attention of the jury to the provisions of the Act of Congress because it was not averred in the petition that the defendant had hauled or permitted to be used on its lines the car in question, or that it was hauled or used in connection with interstate traffic. *Voelker v. Chicago, etc., R. Co.*, (1902) 116 Fed. Rep. 867.

New trial on ground of surprise. — Where the defendant well knew that the condition of the coupler was an issue of fact in the case, and had full opportunity to introduce all the evidence at its command on this point, it certainly is not entitled to a new trial upon the theory that if it had been foreseen that the court was going to cite the Act of Congress upon the question of the legal obligation resting upon the defendant, it might perhaps have had further evidence on the issue of fact. *Voelker v. Chicago, etc., R. Co.*, (1902) 116 Fed. Rep. 867.

SEC. 3. [*Companies complying, etc., may refuse insufficiently equipped cars from connecting lines.*] That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act. [27 Stat. L. 531.]

SEC. 4. [*Grab irons, etc.*] That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars. [27 Stat. L. 531.]

Both loaded and empty cars. — This statute applies not only to cars that are loaded, but to all cars whether empty or loaded which are being used in interstate commerce. *Malott v. Hood*, (1903) 201 Ill. 202.

Ordinary prudence of employee. — A failure to provide such grab irons does not excuse a brakeman from failure to use ordinary prudence in a particular case where he observes the absence of such appliances; nor does this Act change the rule as to the liability of the master where the failure to comply with the statute was not the cause of the injury. *Hodges v. Kimball*, (C. C. A. 1900) 104 Fed. Rep. 745, citing *Cleveland, etc., R. Co. v. Baker*, (C. C. A. 1899) 91 Fed. Rep. 225.

dence in a particular case where he observes the absence of such appliances; nor does this Act change the rule as to the liability of the master where the failure to comply with the statute was not the cause of the injury. *Hodges v. Kimball*, (C. C. A. 1900) 104 Fed. Rep. 745, citing *Cleveland, etc., R. Co. v. Baker*, (C. C. A. 1899) 91 Fed. Rep. 225.

SEC. 5. [*Determination of standard height of drawbars — certificate and notice — noncomplying cars excluded.*] That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for. [27 Stat. L. 531.]

SEC. 6. [*Penalty for violation of law — recovery.*] That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this Act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this Act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs. [29 Stat. L. 85.]

This section was amended to read as above by the Act of April 1, 1896, ch. 87, 29 Stat. L. 85. The amendment consists in striking out the proviso of the section as originally enacted, as follows: "*Provided*, That nothing

in this Act contained shall apply to trains composed of four-wheel cars or to locomotives used in hauling such trains," and inserting the proviso as given in the text.

SEC. 7. [*Time for compliance may be extended.*] That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act. [27 Stat. L. 532.]

SEC. 8. [*Employees injured by noncomplying cars, etc., do not assume the risk.*] That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge. [27 Stat. L. 532.]

It is competent for Congress to say that a common carrier which has not fulfilled the provisions of this Act may not avail itself of the doctrine of assumed risk. *Kansas City, etc., R. Co. v. Flippo*, (1903) 138 Ala. 487.

Effect of Act on common law.—This Act of Congress changes the common law. Before its enactment servants coupling cars used in interstate commerce without automatic couplers assumed the risk and danger of that employment, and carriers were not liable for injuries which their employees suffered in the discharge of this duty. Since the passage, the employees no longer assume this risk, and if they are free from contributory negligence they may recover for the damages they sustain in this work. A statute which thus changes the common law must be strictly construed. The common or the general law is not further abrogated by such a statute than the clear import of its language necessarily requires. *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

Locomotive without automatic coupler.—

The language of this statute does not require the abrogation of the common law that the servant assumes the risk of coupling a locomotive without automatic couplers with a car which is provided with them, *Johnson v. Southern Pac. R. Co.*, (C. C. A. 1902) 117 Fed. Rep. 462.

Known absence of grab irons.—The meaning of the Act is, that by remaining in his employment the servant does not assume the risks generally incident to the absence of such irons, but not that in a particular case of voluntary action, with full knowledge of the situation, the character of the act is not to be determined according to all the facts and circumstances. The known absence of the grab irons is a circumstance which the jury should consider in determining whether the defendant in error was guilty of contributory negligence or intended to assume the risk of the attempt to uncouple. *Cleveland, etc., R. Co. v. Baker*, (C. C. A. 1899) 91 Fed. Rep. 224.

Unmarked car in bad order.—Where a car is in bad order, not so marked, used on a

track for handling active freight trains and cars, and where there is no evidence that an employee injured was engaged in moving the car as one in bad order with a view to its isolation or repair, working under such circumstances with a car in use in a condition contrary to the Act of Congress does not amount to an assumption of the risk arising therefrom. *Chicago, etc., R. Co. v. Voelker*, (C. C. A. 1904) 129 Fed. Rep. 526.

Necessary showing by plaintiff.—The plaintiff in an action for damages for injuries claimed to have been received because the car was not equipped according to this Act, must show by preponderance of evidence that he was engaged in moving interstate commerce at the time of the accident and that at such time the cars then in use were not equipped with automatic couplers. *Winkler v. Philadelphia, etc., R. Co.*, (1902) 4 Penn. (Del.) 80.

Averment of law violated.—It was not necessary, nor indeed permissible under the rules of pleading, that the petition should

set forth the law which had been violated. *Voelker v. Chicago, etc., R. Co.*, (1902) 116 Fed. Rep. 867.

Contributory negligence.—If, in using an unlawful coupler, an employee by his own carelessness contributed to an accident, he cannot recover, notwithstanding the fact that the coupling was unlawful. *Winkler v. Philadelphia, etc., R. Co.*, (1902) 4 Penn. (Del.) 80.

Availability of defense of contributory negligence.—The railroad company is not deprived of the defense of contributory negligence by this Act. Such defense is available to the company, now as well as before the passage of the Act, although the company may not have complied with the statutory requirements. *Denver, etc., R. Co. v. Arrighi*, (C. C. A. 1904) 129 Fed. Rep. 347.

Negligence per se.—It cannot be affirmed to be negligence *per se* for a brakeman to go in between the cars and the engine in order to make a coupling. *Kansas City, etc., R. Co. v. Flipppo*, (1903) 138 Ala. 487.

An Act Requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission.

[Act of March 3, 1901, ch. 866, 31 Stat. L. 1446.]

[SEC. 1.] [*Common carriers to report accidents to Interstate Commerce Commission.*] It shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions of trains or where any train or part of a train accidentally leaves the track, and of all accidents which may occur to its passengers or employees while in the service of such common carrier and actually on duty, which report shall state the nature and causes thereof, and the circumstances connected therewith. [31 Stat. L. 1446.]

SEC. 2. [*Penalty for failure to report.*] That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same. [31 Stat. L. 1446.]

SEC. 3. [*Report inadmissible as evidence.*] That neither said report nor any part thereof shall be admitted as evidence or used for any purpose against such railroad so making such report in any suit or action for damages growing out of any matter mentioned in said report. [31 Stat. L. 1446.]

SEC. 4. [*Form of reports.*] That the Interstate Commerce Commission is authorized to prescribe for such common carriers a method and form for making the reports in the foregoing section provided. [31 Stat. L. 1446.]

[III. TRAIN ROBBERIES.]

An Act For the suppression of train robbery in the Territories of the United States and elsewhere, and for other purposes.

[Act of July 1, 1902, ch. 1876, 32 Stat. L. 727.]

[SEC. 1.] [*Train robberies, etc. — punishment.*] That if any person shall willfully and maliciously trespass upon or enter upon any railroad train, railroad car, or railroad locomotive, within any Territory of the United States, or any place subject to the exclusive jurisdiction or control thereof, with the intent to commit murder, robbery, or any unlawful violence upon or against any passenger on said train or car, or upon or against any engineer, conductor, fireman, brakeman, or any officer or employee connected with said locomotive, train, or car, or upon or against any express messenger or mail agent on said train, or in any such car thereof, or to commit any crime or offense against any person or property thereon, such person shall be punished by imprisonment not exceeding twenty years, or by fine not exceeding five thousand dollars, or both, at the discretion of the court. [*32 Stat. L. 727.*]

SEC. 2. [*Aiding and abetting.*] That any person who shall counsel, aid, abet, and assist in the perpetration of any of the offenses set forth in the preceding section shall be deemed to be principals therein. [*32 Stat. L. 728.*]

SEC. 3. [*Proofs.*] That upon the trial of any person charged with any offense set forth in this Act it shall not be necessary to set forth or prove the particular person against whom it was intended to commit the offense, or that it was intended to commit such offense against any particular person. [*32 Stat. L. 728.*]

RAPE.

R. S. 5345. Rape.

Act of Jan. 15, 1897, ch. 29.

Sec. 5. Punishment of Offense by Indians.

Act of Feb. 9, 1889, ch. 120.

Carnal Knowledge of Female under Sixteen Years of Age.

CROSS-REFERENCES.

By Person in Military Service in Time of War, see *ARTICLES OF WAR*, vol. 1, p. 492.

Qualified Verdict, see *CRIMES AND OFFENSES*, vol. 2, p. 356.

Extradition of Fugitive from Foreign Country, see *EXTRADITION*, vol. 3, p. 69.

Sec. 5345. [Rape.] Every person who, within any of the places or upon any of the waters specified in section fifty-three hundred and thirty-nine, commits the crime of rape shall suffer death. [R. S.]

Act of March 3, 1825, ch. 65, 4 Stat. L. 115.

R. S. sec. 5339 is given in *HOMICIDE*, vol. 3, p. 231. See also as to Great Lakes and connecting waters, *CRIMES AND OFFENSES*, vol. 2, pp. 351, 352.

Verdict may be qualified.—See *CRIMES AND OFFENSES*, vol. 2, p. 356.

In Indian country.—The crime of rape is not provided for in R. S. sec. 2145, and it is a crime for which the general laws of the United States provide a punishment, when committed in a place within the exclusive jurisdiction of the United States, and hence must be an offense against such laws when

committed in the Indian country by a white man against a white woman. *U. S. v. Partello*, (1891) 48 Fed. Rep. 670.

Does not include Indians.—If the defendant is an Indian, he is not embraced by this section, for this section is one of the general laws of the United States in relation to crimes committed in places within their exclusive jurisdiction, from which, by virtue of sections 2145 and 2146 of the Revised Statutes, crimes committed in the Indian country, by one Indian against the person or property of another Indian, were excluded. *U. S. v. Ward*, (1890) 42 Fed. Rep. 320.

SEC. 5. [Punishment of offense by Indians.] That any Indian who shall commit the offense of rape within the limits of any Indian reservation shall be punished by imprisonment at the discretion of the court. So much of the ninth section of chapter three hundred and forty one of the acts of the year eighteen hundred and eighty-five as is inconsistent herewith is herewith [*sic*] repealed. [29 Stat. L. 487.]

This is from the Act of Jan. 15, 1897, ch. 29, set forth in *CRIMES AND OFFENSES*, vol. 2, p. 356. The provision to which the text

refers is set forth in *INDIANS*, vol. 3, p. 388, which see for other provisions on this subject.

An act to punish, as a felony, the carnal and unlawful knowing of any female under the age of sixteen years.

[Act of Feb. 9, 1889, ch. 120, 25 Stat. L. 658.]

[*Carnal knowledge of female under sixteen years of age.*] That every person who shall carnally and unlawfully know any female under the age of sixteen years, or who shall be accessory to such carnal and unlawful knowledge

before the fact in the District of Columbia or other place, except the territories, over which the United States has exclusive jurisdiction; or on any vessel within the admiralty or maritime jurisdiction of the United States, and out of the jurisdiction of any State or Territory, shall be guilty of a felony, and when convicted thereof shall be punished by imprisonment at hard labor, for the first offense for not more than fifteen years, and for each subsequent offense not more than thirty years. [25 Stat. L. 658.]

The words "except the territories" have reference exclusively to that system of organized government long existing within the United States by which certain regions of the country have been erected into civil governments. These governments have an executive, a legislative, and a judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by Act of Congress, and their legislative acts are subject to the disapproval of the Congress of the United States. They are not in any sense independent governments. They have no senators in Congress, and no representatives in the lower house of that body except what are called "delegates," with limited functions. Yet they exercise nearly all the powers of the government under what was generally called "organic Acts," passed by Congress conferring such powers on them. It is this class of governments long known by the name of "territories" that the Act of Congress excepts from the operation of this statute, while it extends to all other places over which the United States have exclusive jurisdiction. Oklahoma was not of this class of territories. *In re Lane*, (1890) 135 U. S. 443.

Indictment containing double charge.—Where an indictment contains the double charge of a rape at common law and of the statutory offense under the Act of Feb. 9, 1889, and where it is quite obvious that both these offenses can be made out from the language

of the indictment, which is in a single count, the allegation that the offense was by violence and against the will of the woman with the other allegations in the indictment describing the offense of rape, and the allegation that the defendant had carnal knowledge of a female under sixteen years of age making out the offense under the statute of 1889, the allegation that the carnal knowledge was against the will of the woman may be rejected as surplusage, and the rest of the indictment be good under the statute referred to; and as the court instructed the jury in accordance with that view of the subject, and as the jury found the prisoner guilty not of the crime of rape but of the smaller crime of carnal knowledge of a female under sixteen years of age, the action of the court on the subject was probably correct. At all events the court had jurisdiction of the prisoner, and it had jurisdiction both of the offense of rape and of carnal knowledge of a female under sixteen years of age. It was its duty to decide whether there was a sufficient indictment to subject the party to trial for either or both of these offenses. As no motion was made to compel the prosecuting attorney to elect on which of the charges he would try the prisoner, there was no error in its rulings on this subject. If there were it was not an error which went to the jurisdiction of the court to try and sentence the prisoner. *In re Lane*, 135 U. S. 443.

REBELLION.

See *INSURRECTION*, vol. 3, p. 521.

RECEIVERS.

See *JUDICIAL OFFICERS*, vol. 4, p. 61; *NATIONAL BANKS*, vol. 5, p. 75; *RAILROADS*, *ante*, p. 718.

RECEIVING STOLEN GOODS.

R. S. 5357. *Receiving Stolen Goods.*

Act of March 3, 1875, ch. 144.

Sec. 2. Receiving Stolen Property of the United States.

CROSS-REFERENCES.

Property Stolen from the Mail, see *POSTAL SERVICE*; vol. 5, p. 957.

See also *LARCENY*, vol. 4, p. 789.

Sec. 5357. [*Receiving stolen goods.*] Every person who, upon the high seas, or in any place under the exclusive jurisdiction of the United States, buys, receives, or conceals any money, goods, bank-notes, or other thing which may be the subject of larceny, and which has been feloniously taken or stolen from any other person, knowing the same to have been taken or stolen, shall be punished by a fine of not more than one thousand dollars, and by imprisonment at hard labor not more than three years. [*R. S.*]

Act of March 3, 1825, ch. 65, 4 Stat. L. 116; Act of April 30, 1790, ch. 9, 1 Stat. L. 116.

Error in instruction.—In instructing the jury it is not error that the court fails to use the word "feloniously" as applied to "stolen." *Harless v. U. S.*, (1898) 1 Indian Ter. 447.

What must appear for conviction.—In

order to convict a person for the crime of receiving stolen property it must appear, first, that the property was stolen by some person other than the defendant; second, that the defendant received the property and converted it to his own use; and third, that the defendant knew that the property when he received it had been stolen. *Harless v. U. S.*, (1898) 1 Indian Ter. 447.

SEC. 2. [*Receiving stolen property of the United States.*] That if any person shall receive, conceal, or aid in concealing, or have, or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined from the United States by any other person, knowing the same to have been so embezzled, stolen, or purloined, such person shall, on conviction before the circuit or district court of the United States in the district wherein he may have such property, be punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor in the penitentiary not exceeding five years, one or both, at the discretion of the court before which he shall be convicted; and such receiver may be tried either before or after the conviction of the principal felon, but if the party has been convicted, then the judgment against him shall be conclusive evidence in the prosecution against such receiver that the property of the United States therein described has been embezzled, stolen, or purloined. [*18 Stat. L. 479.*]

This is from the Act of March 3, 1875, ch. 144, "An act to punish certain larcenies, and the receivers of stolen goods." See *LARCENY*, vol. 4, p. 790.

Constitutionality.—"So much of the above Act * * * as declares that the judgment of conviction against the principal felons shall be evidence in the prosecu-

tion against the receiver that the property of the United States alleged to have been embezzled, stolen, or purloined had been embezzled, stolen, or purloined, is in violation of the clause of the Constitution of the United States declaring that in all criminal prosecutions the accused shall be confronted with the witnesses against him." Kirby v. U. S., (1899) 174 U. S. 47.

Averment of name of principal.—An objection to an indictment on the ground that the indictment does not show from whom the accused received the stolen goods, nor state that the name of such person was unknown to the grand jurors, is not well taken. If the goods were in fact stolen from the United States and if they were received by the accused, no matter from whom, with intent to convert them to his own use or gain, and knowing that they had been stolen from the United States, he could be found

guilty of the crime, even if it were not shown by the evidence from whom he received such goods. Kirby v. U. S., (1899) 174 U. S. 47.

Record of conviction of principals as evidence.—“Where the statute makes the conviction of the principal thief a condition precedent to the trial and punishment of a receiver of the stolen property, the record of the trial of the former would be evidence in the prosecution against the receiver to show that the principal felon had been convicted; for a fact of that nature could only be established by a record. The record of the conviction of the principals could not, however, be used to establish, against the alleged receiver charged with the commission of another and substantive crime the essential fact that the property alleged to have been feloniously received by him was actually stolen from the United States.” Kirby v. U. S., (1899) 174 U. S. 47.

RECORDS.

- B. S. 5403.** *Destroying, etc., Public Records*, 764.
5408. *Destroying Records by Officer in Charge*, 764.
5411. *Altering, etc., Records in Surveyor-General's Office in California*, 764.
5412. *Deposit of Fraudulent Papers in Archives*, 765.

CROSS-REFERENCES.

- Records in Relation to Army and Navy*, see **ARTICLES FOR THE GOVERNMENT OF THE NAVY**, vol. 1, p. 458; **ARTICLES OF WAR**, vol. 1, p. 478; **NAVY**, vol. 5, p. 225; **PENSIONS**, vol. 5, p. 606; **WAR DEPARTMENT AND MILITARY ESTABLISHMENT**.
- In Bankruptcy Matters*, see **BANKRUPTCY**, vol. 1, pp. 649, 652.
- Of Civil Service Commissioners*, see **CIVIL SERVICE**, vol. 1, p. 810.
- Of Census Office*, see **CENSUS**, vol. 1, p. 735.
- Costs of Printing Record on Appeal, etc.*, see **COSTS**, vol. 2, p. 293.
- Lost or Destroyed Records*, see **EVIDENCE**, vol. 3, pp. 35, 36.
- Copies of Foreign Records*, see **EVIDENCE**, vol. 3, p. 40.
- Proof of Records and Effect in Evidence*, see **EVIDENCE**, vol. 3, pp. 37, 39.
- Forging and Counterfeiting*, see **COUNTERFEITING AND FORGING**, vol. 2, p. 297.
- Of District Courts*, see **EVIDENCE**, vol. 3, p. 34; **JUDICIARY**, vol. 4, pp. 218, 237, 238.
- Of Old Court of Appeals*, see **JUDICIARY**, vol. 4, p. 435.
- Relating to Internal Revenue Matters*, see **INTERNAL REVENUE**, vol. 3, pp. 591, 724, 744.
- Judgments*, see **JUDGMENTS**, vol. 4, p. 2.
- Transcript of Record on Division of Judicial District in California*, see **JUDICIAL OFFICERS**, vol. 4, p. 168.
- Of District Court for Eastern District of Virginia*, see **JUDICIAL OFFICERS**, vol. 4, p. 192.
- Of District Court in Colorado*, see **JUDICIARY**, vol. 4, p. 630.
- Copies of Records on Removal of Case to Federal Court*, see **JUDICIARY**, vol. 4, p. 264.
- On Appeal or Error*, see **JUDICIARY**, vol. 4, pp. 446, 556, 624.
- Of Office of Agent of Treasury*, see **JUSTICE, DEPARTMENT OF**, vol. 4, p. 771.
- Of Mining Claims*, see **MINERAL LANDS, MINES, AND MINING**, vol. 5, p. 1.
- Stealing or Altering Records*, see **OBSTRUCTING JUSTICE**, vol. 5, p. 383; **PUBLIC LANDS**, ante, p. 188.
- Of Post Offices*, see **POSTAL SERVICE**, vol. 5, p. 780.
- Records of Rebellion*, see **PUBLIC DOCUMENTS**, ante, p. 147.
- Of Public Land Offices*, see **PUBLIC LANDS**, ante, p. 188.
- Care of Public Records*, see **PUBLIC DOCUMENTS**, ante, p. 147.
- Of Property of United States and District of Columbia*, see **PUBLIC PROPERTY, BUILDINGS, AND GROUNDS**, ante, p. 672.
- Records of Documents Relating to Vessels*, see **SHIPPING AND NAVIGATION**.
- Of Conveyances, etc., of Vessels*, see **SHIPPING AND NAVIGATION**.
- Of Inspectors of Steam Vessels*, see **STEAM VESSELS**.
- Copies of Records*, see **STATE DEPARTMENT**.
- Of War Department, of Revolutionary War, and War of 1812*, see **WAR DEPARTMENT AND MILITARY ESTABLISHMENT**.
- Removal from Records of Charge of Desertion*, see **WAR DEPARTMENT AND MILITARY ESTABLISHMENT**.
- See also this title in the *General Index*.

Sec. 5403. [*Destroying, etc., public records.*] Every person who willfully destroys or attempts to destroy, or, with intent to steal or destroy, takes and carries away any record, paper, or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, or document, or record filed or deposited in any public office, or with any judicial or public officer, shall, without reference to the value of the record, paper, document, or proceeding so taken, pay a fine of not more than two thousand dollars, or suffer imprisonment, at hard labor, not more than three years, or both. [R. S.]

Act of Feb. 26, 1853, ch. 81, 10 Stat. L. 170.

The object of the statute is to preserve the public records and papers intact from all kinds of spoliation, mutilation, or destruction. *U. S. v. De Groat*, (1887) 30 Fed. Rep. 764.

Necessity of intent to destroy a record.—The specific intent to destroy a record must be present, and its absence, through want of knowledge of the fact that the paper or document destroyed constituted a record, relieves the defendants of any criminal offense under this statute, however guilty they may be under the state laws, of larceny, or under the Act of Congress of March 3, 1875, ch. 144, 18 Stat. L. 479, which was passed to further protect the records and other property of the United States from the simple crime of theft or larceny, without regard to any specific intent to destroy them as records. *U. S. v. De Groat*, (1887) 30 Fed. Rep. 764.

From what place taken.—This offense may be committed by taking the records from any place whatever, wherever they may be found, no matter how private or unusual the place; but the intent to destroy a record must exist from whatever place the papers are taken. *U. S. v. De Groat*, (1887) 30 Fed. Rep. 764.

Larceny of records as property.—"It is manifest that this statute is not broad enough and was not intended to punish the mere larceny or theft of the papers or documents as property, but that the essential element of the offense is the specific intent

to destroy them as records of a public office; or, in other words, to obliterate or conceal them as the evidence of that which constitutes their value as public records, or to destroy or impair their legal effect or usefulness as a record of our governmental affairs, be that effect or usefulness what it may." *U. S. v. De Groat*, (1887) 30 Fed. Rep. 764.

Where public records were stored in a barn, and the defendants stole them as old paper and not as public records, and sold them to junk dealers, they are not guilty of the offense described in this statute, as the intent to destroy a public record is not present. *U. S. v. De Groat*, (1887) 30 Fed. Rep. 764.

Abandoned records.—The government or its officials may throw away papers, abandon them, send them to the junk dealer, or otherwise emancipate them from the category of records, as well as other people; and if its officials so deal with the records and so keep them that they appear to be abandoned, that fact may be sufficient to justify others in treating them as abandoned in relation to their character as records. *U. S. v. De Groat*, (1887) 30 Fed. Rep. 764.

Record as evidence of its character.—"Because a paper bears on its face indications of once having been a public record, or that possibly or probably it was such a record, it cannot be fairly implied as a fact that it always continues to be so wherever or under whatever circumstances it may be found by one charged with an intention to destroy it as a record." *U. S. v. De Groat*, (1887) 30 Fed. Rep. 764.

Sec. 5408. [*Destroying records by officer in charge.*] Every officer, having the custody of any record, document, paper, or proceeding specified in section fifty-four hundred and three, who fraudulently takes away, or withdraws, or destroys any such record, document, paper, or proceeding filed in his office or deposited with him or in his custody, shall pay a fine of not more than two thousand dollars, or suffer imprisonment at hard labor not more than three years, or both; and shall, moreover, forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States. [R. S.]

Act of Feb. 26, 1853, ch. 81, 10 Stat. L. 170.

Sec. 5411. [*Altering, etc., records in surveyor-general's office in California.*] Every person who, without lawful authority, willfully takes from the archives of the surveyor-general's office in California, any expediente, map, diseño, book, paper, writing, record, document, seal, stamp, or die; or willfully alters, defaces, mutilates, injures, or destroys any expediente, book, paper, map, diseño, instrument of writing, document, record, seal, stamp, or die,

deposited in such archives; or conceals or unlawfully withholds from the possession of the surveyor-general, or on demand refuses to deliver to him any expediente, map, diseño, official book, paper, writing, document, archive, record, seal, stamp, or die relating to or used in the administration of government in the Department of Upper California, and belonging to the Government during the existence of Spanish or Mexican authority in that department; or who willfully alters, defaces, mutilates, makes away with, or destroys any such official book, expediente, map, diseño, paper, writing, document, archive, record, seal, stamp, or die, shall pay a fine of not more than ten thousand dollars, and be imprisoned for a term not more than ten years. [R. S.]

Act of May 18, 1858, ch. 39, 11 Stat. L. 290.

See also R. S. secs. 2471-2473, in PUBLIC LANDS, *ante*, p. 527.

Sec. 5412. [*Deposit of fraudulent papers in archives.*] Every person who secretly or fraudulently places, or causes to be placed, in or among the archives of the surveyor-general's office in California, any expediente, book, paper, diseño, map, draught, record, or any instrument of writing purporting to be a petition, decree, order, report, concession, grant, confirmation, map, diseño, expediente or part of an expediente, denouncement, title-paper, or evidence of right, title, or claim to any land, mine, or mineral, or any book, writing, paper, or document whatever, shall pay a fine of not more than five thousand dollars, or be imprisoned for a term not more than three years; or be both fined and imprisoned within such limits. [R. S.]

Act of May 18, 1858, ch. 39, 11 Stat. L. 290.

See note to section 5411.

REFORMATORIES.

See *PRISONS AND PRISONERS*, *ante*, p. 23.

REGATTAS.

See *SHIPPING AND NAVIGATION*.

REGISTRY OF VESSELS.

See *SHIPPING AND NAVIGATION*.

REMOVAL OF CAUSES.

See *JUDICIARY*, vol. 4, p. 195.

REPLEVIN.

R. S. 934. *Property Taken under Revenue Laws Irrepleviable.*

Sec. 934. [*Property taken under revenue laws irrepleviable.*] All property taken or detained by any officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof. [*R. S.*]

Act of March 2, 1833, ch. 57, 4 Stat. L. 632;
Act of July 13, 1866, ch. 184, 14 Stat. L. 172.

Effect on powers of customs officers.—In the case of seized goods, and particularly in the case of goods liable for forfeiture, this section and R. S. sec. 938 leave nothing for customs officers to decide or control in the regular line of the duties imposed upon them as such officers. *In re Chichester*, (1891) 48 Fed. Rep. 281.

Power of court to take possession.—Where the authority of the court to proceed with regard to property seized by a collector is denied by the collector, a marshal of the court may, under the provisions of this section and the general powers of the court and under its explicit order, take the property out of the possession of the officers of customs into his exclusive custody. *The Conqueror*, (1892) 49 Fed. Rep. 99.

Bill in equity.—Goods in charge of a collector under this section are irrepleviable, although subject to the orders and decrees of the courts of the United States having appropriate jurisdiction. There is no form of action at common law which would give possession of them, but a bill in equity is the only and therefore an appropriate method of proceeding therefor. *Pollard v. Reardon*, (1895) 65 Fed. Rep. 848.

Seizure under state process.—Distilled liquors in a United States bonded warehouse cannot be seized under state process. (1894) 21 Op. Atty.-Gen. 73.

Property seized as belonging to another.—Under this Act replevin does not lie for property of the plaintiff seized under a warrant

by a collector of internal revenue as the property of another. *Treat v. Staples*, (1870) Holmes (U. S.) 1, 24 Fed. Cas. No. 14,162.

Liquors in bonded warehouse.—The legal status of distilled liquors in a bonded warehouse of the United States, and under the control of the collector of internal revenue, is definitely stated and settled by this section. (1894) 21 Op. Atty.-Gen. 73.

Jurisdiction over yacht seized as imported.—Under this section the determination of the question whether a pleasure yacht brought from a foreign country to this country was an imported article or not, is within the jurisdiction of the District Court, where she had been seized by the collector of the port as liable to duty and thereupon libeled by the owner averring that the seizure of the yacht by the collector was illegal and wrongful. *In re Fassett*, (1892) 142 U. S. 479.

Nominal damages should only be allowed on judgment for defendant in replevin where he has failed to show right in himself to the property in controversy. *Treat v. Staples*, (1870) Holmes (U. S.) 1, 24 Fed. Cas. No. 14,162.

After duty paid.—After the duty on imported goods which have been deposited in a private bonded warehouse has been paid and a withdrawal permit issued, the government has no further concern with the goods, and the right to withhold or deliver them rests with the warehouseman alone. (1895) 21 Op. Atty.-Gen. 232.

REPORTS.

See *ESTIMATES, APPROPRIATIONS, AND REPORTS*, vol. 2, p. 875;
REPORTS (LAW); and consult the *General Index*.

REPORTS (LAW).

- E. S. 681.** *Duties of the Reporter of Supreme Court*, 767.
682. *Reporter's Salary and Price of Reports*, 767.
Act of Aug. 5, 1882, ch. 389, 768.
Sec. 1. Reporter's Salary — Clerk Hire — Expenses — Price of Reports, 768.
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Sec. 1. Distribution of Supreme Court Reports to Circuit and District Courts, 769.
2. Additional Copies from Publishers — Who to Make Distribution, 769.
Act of July 1, 1902, ch. 1355, 770.
Sec. 1. Further Distribution of Supreme Court Reports, 770.
2. Same Subject, 770.
3. Additional Copies from Publishers, 771.
4. Distribution of Digest of Decisions of Supreme Court, 771.
5. (Distribution of Revised Statutes and Supplements. See STATUTES), 771.
6. Price of Reports and Digests, 771.
E. S. 383. *Publication of Opinions of Attorney-General*, 772.
Res. of Aug. 3, 1882, No. 63, 772.
Publication of Decisions of Comptroller of the Treasury, 772.

CROSS-REFERENCE.

Decisions of Commissioner of Patents and of Courts in Patent Cases, see **PUBLIC DOCUMENTS**, *ante*, p. 147.

Sec. 681. [*Duties of the reporter of Supreme Court.*] The reporter shall cause the decisions of the Supreme Court made during his office to be printed and published within eight months after they are made; and, within the same time, shall deliver three hundred copies of the volumes of said reports to the Secretary of the Interior. And he shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver, in like manner and time, three hundred copies. [*R. S.*]

Act of Aug. 29, 1842, ch. 264, 5 Stat. L. 545; *Act of May 21, 1866, ch. 88*, 14 Stat. L. 51; *Act of July 23, 1866, ch. 208*, 14 Stat. L. 205; *Act of March 2, 1867, ch. 168*, 14 Stat. L. 471.

Appointment of reporter of Supreme Court.

— *R. S. sec. 677* provides that "The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions." See **JUDICIAL OFFICERS**, vol. 4, p. 73.

Sec. 682. [*Reporter's salary and price of reports.*] The reporter shall be entitled to receive from the Treasury an annual salary of twenty-five hundred dollars, when his report of said decisions constitutes one volume, and an additional sum of fifteen hundred dollars when, by direction of the court, he causes to be printed and published, in any year, a second volume. But said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold by him to the public for a price not exceeding five dollars a volume. [*R. S.*]

Act of Aug. 29, 1842, ch. 264, 5 Stat. L. 545; Act of May 21, 1866, ch. 88, 14 Stat. L. 51; Act of July 23, 1866, ch. 208, 14 Stat. L.

205; Act of March 2, 1867, ch. 168, 14 Stat. L. 471.

See following text for modification of the above section.

[SEC. 1.] [*Reporter's salary — clerk hire — expenses — price of reports.*]
 * * * The reporter of the decisions of the Supreme Court of the United States shall be entitled to receive from the Treasury an annual salary of four thousand five hundred dollars when his report of said decisions constitutes one volume and an additional sum of one thousand two hundred dollars when by direction of the court he causes to be printed and published in any year a second volume, and said reporter shall be annually entitled to clerk-hire in the sum of one thousand two hundred dollars, and to office rent, stationery, and contingent expenses in the sum of six hundred dollars, and an amount sufficient for the payment of said sums is hereby appropriated: *Provided*, That the above provision shall not apply to decisions of the court pronounced at the last term thereof, but that said decisions shall be printed and the volumes containing them delivered to the Secretary of the Interior as prescribed by existing laws: and an amount sufficient to pay the salary and compensation of the reporter in connection therewith is hereby appropriated: *And provided further*, That the volumes of the decisions which said court shall hereafter pronounce shall be furnished by the Reporter to the public at a sum not exceeding two dollars per volume, and the number of volumes now required to be delivered to the Secretary of the Interior shall be furnished by the reporter without any charge therefor. * * * [22 Stat. L. 254.]

This is from the Legislative, Executive, and Judicial Appropriation Act of Aug. 5, 1882, ch. 389.

Sec. 683. [*Distribution of the Supreme Court reports.*] The three hundred copies of said reports delivered to the Secretary of the Interior shall be distributed as follows: To the President, the justices of the Supreme Court, the circuit judges, the judges of the district courts, the judges of the Court of Claims, the judges of the supreme court of the District of Columbia, the judges of the several territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster-General, the Attorney-General, the Solicitor-General, the Secretary of the Senate, for the use of the Senate, the Clerk of the House of Representatives, for the use of the House of Representatives, the governors of the Territories, the Commissioner of Agriculture, the Commissioner of Internal Revenue, the Commissioner of Indian Affairs, the Commissioner of Pensions, the Commissioner of the General Land-Office, the Commissioner of Patents, the Commissioner of Customs, the Commissioner of Education, the Paymaster-General, the First and Second Comptrollers of the Treasury, the First, Second, Third, Fourth, Fifth, and Sixth Auditors of the Treasury, the Solicitor of the Treasury, the Register of the Treasury, the Treasurer of the United States, and the heads of such other executive offices as may hereafter be provided by law, of equal grade with any of the said officers, each one copy; to the Secretary of the Senate, for the use of the standing committees of the Senate, ten copies; and to the Clerk of the House of Representatives, for the use of the standing committees of the House, twelve copies; and the residue of said copies shall be deposited in the Library of Congress, to become a part of said Library. The copies received by any officer under this section shall, in case of his death,

resignation, or dismissal from office, be delivered up to his successor in office. [R. S.]

Act of Aug. 29, 1842, ch. 264, 5 Stat. L. 545; Act of March 2, 1861, ch. 87, 12 Stat. L. 245; Act of July 15, 1870, ch. 292, 16

Stat. L. 307; Act of July 23, 1866, ch. 208, 14 Stat. L. 205.

See amendment in following Acts.

An act to amend section six hundred and eighty-three of the Revised Statutes relating to the distribution of the reports of the Supreme Court.

[Act of Feb. 12, 1889, ch. 135, 25 Stat. L. 661.]

[SEC. 1.] [*Distribution of Supreme Court reports to Circuit and District Courts.*] That section six hundred and eighty-three of the Revised Statutes of the United States be, and the same is hereby, so amended as to provide for the distribution, by the Secretary of the Interior, of one set of the official reports of the decisions of the Supreme Court of the United States, or an exact reprint of the same, comprising volumes one to one hundred and twenty-two, inclusive, or so many volumes as may be needed with those already supplied to make one such set, to each of the places where the circuit and district courts of the United States are regularly held: *Provided*, That where a circuit court and district court are both holden at the same place, only one such set, or so many volumes as may be needed with those already supplied to make one such set, shall be distributed to that place: *Provided further*, That for the sets or parts of sets distributed as aforesaid not exceeding two dollars per volume shall be paid; and said report shall be kept by the clerks of said courts and their successors in office for the use of said courts and the officers thereof; and the sum of twenty-eight thousand dollars, or so much thereof as may be necessary, is hereby appropriated to carry out the above provision. [25 Stat. L. 661.]

SEC. 2. [*Additional copies from publishers — who to make distribution.*] That, beginning with volume one hundred and twenty-three, the reporter of the decisions of the Supreme Court of the United States shall deliver to the Secretary of the Interior, in addition to the number heretofore required by law to be so delivered by him, seventy-six copies of each volume of the reports of said decisions, for which additional copies he shall be allowed not exceeding two dollars per volume. And hereafter all the copies of said reports furnished by said reporter shall be distributed by the Secretary of the Interior in the manner heretofore authorized by law: *Provided*, That the Secretary of the Interior shall also distribute to each of the places where the circuit and district courts of the United States are regularly holden one copy of the reports so furnished, to be kept by the clerks of said courts and their successors in office, for the use of said courts and the officers thereof: *Provided further*, That where a circuit court and a district court are both holden at the same place, only one copy shall be distributed to that place, and the residue of the copies shall be deposited in the Library of Congress. And the said reports, in all cases where the same are distributed as aforesaid, shall remain the property of the United States, and be preserved as such by the above-named officers, and by them to be turned over to their successors in office: And so much of section three hundred and eighty-six of the Revised Statutes as charges the Department of Justice with the distribution thereof is hereby repealed. [25 Stat. L. 661.]

R. S. secs. 386, 387, relate to the distribution of statutes and reports to judges, and a register thereof. See PUBLIC DOCUMENTS, *ante*, p. 153,

An Act For the further distribution of the reports of the Supreme Court, and for other purposes.

[Act of July 1, 1902, ch. 1355, 32 Stat. L. 630.]

[SEC. 1.] [*Further distribution of Supreme Court reports.*] That the Secretary of the Interior be, and he is hereby, authorized and directed to distribute to each of the following-named officers of the United States, additional to those named in section six hundred and eighty-three of the Revised Statutes, namely: Each assistant Attorney-General; the Solicitor of the Department of State; the Comptroller of the Currency; the Judge-Advocate-General, Navy Department; the Interstate Commerce Commission; the clerk of the Supreme Court of the United States; the marshal of the Supreme Court of the United States, and the attorney for the District of Columbia, one copy of each volume of the Official Reports of the Supreme Court of the United States, including those already published and those hereafter to be published, or a reprint of the same, or so many of said volumes as with those already in the possession of any of those officers will make a complete set; and he shall also distribute of the same reports to the law library of the Department of the Interior and the library of the Department of Justice each two sets, and to the marshal of said court, as custodian of public property used by same, three copies of said reports hereafter printed, for use in the conference room, the robing room, and the court room of said court for the use of the justices thereof, and to each United States circuit and district judge and to each judge of the court of appeals of the District of Columbia who has not already been supplied, one set; and he shall also distribute to each additional United States judge hereafter appointed one complete set of said reports, which shall in all cases be transmitted to their successors in office, and to the Secretary of the Senate for the use of the committees of the Senate ten complete sets of said reports, and to the Clerk of the House of Representatives, to be distributed to and for the use of the committees of said House, ten complete sets of said reports. [32 Stat. L. 630.]

What reports authorized.—This section authorizes the distribution of the official edition only of those reports, together with reprints of such earlier volumes as are out of print or are otherwise difficult to procure. (1902) 24 Op. Atty.-Gen. 106.

What constitutes "reprint."—While a reprint of the official reports of the Supreme Court need not be a facsimile, yet it is not a reprint unless it contains the same matter as the official edition. The official edition

contains more than the opinion of the court. It contains a preliminary statement of facts which is often prepared by the justices, a syllabus and headline, indices, and occasionally footnotes; at times it contains addresses made on the occasion of the death of members of the court. And unless the so-called "reprint" contains all of these, it is not a reprint even though it reproduces *verbatim et literatim* the text of the decisions. (1902) 24 Op. Atty.-Gen. 106.

SEC. 2. [*Same subject.*] That the Secretary of the Interior shall likewise distribute to each of the places where circuit and district courts of the United States are now holden, including the Indian Territory, islands of Hawaii and Porto Rico, to which they have not already been supplied under the provisions of the Act of Congress approved February twelfth, eighteen hundred and eighty-nine, and to the Naval Academy at Annapolis and to the Military Academy at West Point, one complete set of the Reports of the Supreme Court, including those already published and those hereafter to be published, or a reprint of the same, or such volumes as with those already furnished will make one complete set, the judges holding such courts to select the edition of such reports to be supplied for such courts; and he shall also distribute to the Secretary of War twelve complete sets for the use of the proper courts and offices of the Philippine Islands and of the headquarters of military departments in the United States, in his discretion, and to each and every place where a new circuit

and district court may be hereafter established one complete set of said reports; and the clerks of said courts shall, in all cases, keep these reports for the use of the courts and the officers thereof: *Provided, however,* That no distribution of reports under this section shall be made to any place where the court is not held in a building owned by the United States, or where there is no United States officer to whose responsible custody they can be committed. [32 Stat. L. 630.]

This right of selection is limited to judges of the Circuit and District Courts, and does not extend to the other distributees mentioned in this section. It is also limited to the copies to be supplied for the courts, and does not include reports intended for the individual use of the judges. (1902) 24 Op. Atty-Gen. 106.

Official or other editions.—Under this section the Circuit and District judges are authorized to select the editions, whether official or otherwise, for their respective courts, provided that no volumes of the reports have been previously furnished by such court. (1902) 24 Op. Atty-Gen. 106.

SEC. 3. [*Additional copies from publishers.*] That, beginning with volume one hundred and eighty-three, the publishers of the decisions of the Supreme Court shall deliver to the Secretary of the Interior, in addition to the number heretofore supplied by law, one hundred and four copies of each and every volume of such decisions, and they shall also deliver the seventy-six additional copies provided for in the Act of February twelfth, eighteen hundred and eighty-nine, heretofore delivered by the reporter of the Supreme Court, twenty-five copies of which shall be deposited in the law library of the Supreme Court. [32 Stat. L. 631.]

By whom furnished.—The copies to be distributed under this section are to be furnished by the publishers of the official reports. (1902) 24 Op. Atty-Gen. 106.

SEC. 4. [*Distribution of digest of decisions of Supreme Court.*] That the Secretary of the Interior shall likewise distribute to each United States judge to whom and to each place to which the Decisions of the Supreme Court are sent under the provisions of this Act or of prior laws, a copy of such digest now published, or in course of publication, of the Supreme Court Reports in four volumes covering the decisions of said court to the end of the October Term, eighteen hundred and ninety-eight, or a later period, and to cost not more than twenty-six dollars, as the several Judges and officials shall select respectively. [32 Stat. L. 631.]

To whom distributed.—By this section the digests are to be distributed to each judge or other official entitled to receive the decisions

either under this Act or prior legislation. (1902) 24 Op. Atty-Gen. 106.

SEC. 5. [*Distribution of Revised Statutes and Supplements.* See STATUTES.]

SEC. 6. [*Price of Reports and Digests.*] That such sum of money as is required to pay for the reports of the Supreme Court and for the digest, and for the Revised Statutes and supplements thereto, the delivery and distribution of which are provided for in this Act, is hereby appropriated, out of any money in the Treasury not otherwise appropriated: *Provided,* That not to exceed two dollars per volume shall be paid for such reports and twenty-six dollars per set for such digest, the said moneys to be disbursed under the direction of the Secretary of the Interior, and the Secretary of the Interior shall include in his annual estimates submitted to Congress an estimate for both the current volumes of reports and the additional sets of reports and digest, the distribution of which is provided for in this Act. [32 Stat. L. 631.]

Sec. 383. [*Publication of opinions of attorney-general.*] The Attorney-General shall from time to time cause to be edited, and printed at the Government Printing-Office, an edition of one thousand copies of such of the opinions of the law-officers herein authorized to be given as he may deem valuable for preservation in volumes, which shall be, as to size, quality of paper, printing, and binding, of uniform style and appearance, as nearly as practicable, with volume eight of such opinions, published, by Robert Farnham, in the year eighteen hundred and sixty-eight. Each volume shall contain proper head-notes, a complete and full index, and such foot-notes as the Attorney-General may approve. Such volumes shall be distributed in such manner as the Attorney-General may from time to time prescribe. [R. S.]

Act of June 22, 1870, ch. 150, 16 Stat. L. 165.

Statutes. See JUSTICE, DEPARTMENT OF, vol. 4, p. 762.

This section is from title 8 of the Revised

Joint resolution requiring the Public Printer to publish certain decisions of the First Comptroller of the Treasury Department.

[Res. No. 63, of Aug. 3, 1882, 22 Stat. L. 391.]

[*Publication of decisions of comptroller of the treasury.*] That the Public Printer be, and is, required to print not more than one volume each year of the decisions and opinions of the First Comptroller of the Treasury Department, with such explanatory matter as he may furnish, and to furnish for the use of each Senator, Representative, and Delegate in Congress ten copies thereof, to the Comptroller two thousand copies, and for distribution in the manner provided in section seven of the act of June twentieth, eighteen hundred and seventy-four (eighteenth Statutes at Large, page one hundred and thirteen), providing for the publication of the statutes, one-half the number therein mentioned. [22 Stat. L. 391.]

The office of first comptroller of the treasury is now designated as comptroller of the treasury. See TREASURY DEPARTMENT.

REPRESENTATIVES.

See CONGRESS, vol. 2, p. 206.

RESCUE.

- R. S. 5400.** *Rescue at Executions.*
5401. *Rescue of Prisoners.*
5402. *Rescue of Body After Execution.*

CROSS-REFERENCES.

Of Person Arrested on Process in Civil Rights Cases, see *CIVIL RIGHTS*, vol. 1, p. 804.
Taking Seized Property from Custody of Revenue Officer, see *OBSTRUCTING JUSTICE*, vol. 5, p. 383.
Rescue of Extradited Persons, see *EXTRADITION*, vol. 3, p. 88.

Sec. 5400. [*Rescue at executions.*] Every person who, by force, sets at liberty or rescues any person found guilty of any capital crime, while going to execution or during execution, shall suffer death. [*R. S.*]

Act of April 30, 1790, ch. 9, 1 Stat. L. 117.

Punishment of death abolished. — See *CRIMES AND OFFENSES*, vol. 2, p. 357.

Sec. 5401. [*Rescue of prisoners.*] Every person who, by force, sets at liberty or rescues any person who, before conviction, stands committed, for any capital crime against the United States, or who by force sets at liberty or rescues any person committed for or convicted of any offense other than capital, shall be fined not more than five hundred dollars, and imprisoned not more than one year. [*R. S.*]

Act of April 30, 1790, ch. 9, 1 Stat. L. 117.

Rescue of Indiana prisoner. — An Indian woman arrested by the Indian police on the Umatilla reservation, on a charge of adultery committed thereon, was committed to the Indian jail for trial before the "Court of Indian Offenses," and while so committed was

rescued and set at liberty by the defendants. It was held that they thereby committed the crime of rescue as defined by this section, by forcibly setting a person at liberty who was committed for a "crime against the United States." *U. S. v. Clapox*, (1888) 35 Fed. Rep. 575.

Sec. 5402. [*Rescue of body after execution.*] Every person who, after execution, by force rescues or attempts to rescue the dead body of any offender out of the custody of the marshal or his officers during the conveyance of such body to any place for dissection, as provided in section fifty-three hundred and forty, or by force rescues or attempts to rescue such body from the house of any surgeon, where the same has been deposited in pursuance of that section, shall be liable to a fine of not more than one hundred dollars, and an imprisonment not more than twelve months. [*R. S.*]

Act of April 30, 1790, ch. 9, 1 Stat. L. 113.

RETURNS OFFICE.

See *PUBLIC CONTRACTS*, ante, p. 90.

REVENUE.

See *CUSTOMS DUTIES*, vol. 2, p. 372; *INTERNAL REVENUE*, vol. 3, p. 540.

REVENUE MARINE—REVENUE-CUTTER SERVICE.

- R. S. 2747.** *Revenue Cutters*, 775.
5318. *Vessels in Addition to Revenue Cutters May Be Employed*, 775.
2748. *Useless Cutters May Be Sold*, 775.
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R. S. 2753. (*Superseded*), 777.
Act of July 31, 1894, ch. 174, 777.
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 Sec. 1. Engineer in Chief — Rank and Pay, 777.
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R. S. 2755. *Officers on Duty Entitled to One Navy Ration per Day*, 781.
2756. *Contracts for Rations Authorized*, 781.
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- R. S. 2757.** *Revenue Officers to Co-operate with the Navy*, 781.
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2761. *Returns*, 782.
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CROSS-REFERENCES.

Oath to Officers, see *CUSTOMS DUTIES*, vol. 2, p. 599.
Making Searches and Arrests, see *CUSTOMS DUTIES*, vol. 2, pp. 742-744.
Estimates and Reports of Expenditures, see *ESTIMATES, APPROPRIATIONS, AND REPORTS*, vol. 2, pp. 885, 921.
Detail of Officers and Men under Commissioner of Fish and Fisheries, see *FISH AND FISHERIES*, vol. 3, p. 113.
Execution of Quarantine and Health Laws, see *HEALTH AND QUARANTINE*, vol. 2, p. 214.
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Detail of Officers to Life-saving Service, see *LIFE SAVING*, vol. 4, p. 816.
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Enforcement of Regulations as to Regattas, see *SHIPPING AND NAVIGATION*.
Examination of Accounts by Auditors, see *TREASURY DEPARTMENT*.

Sec. 2747. [*Revenue cutters.*] The President may, for the better securing the collection of import or tonnage duties, cause to be maintained so many of the revenue-cutters as may be necessary to be employed for the protection of the revenue, the expense whereof shall be paid out of such sum as shall be annually appropriated for the revenue-cutter service, and not otherwise.
[R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 699; Act of March 3, 1845, ch. 78, 5 Stat. L. 795; Act of July 20, 1868, ch. 177, 15 Stat. L. 112.

Sections 2747-2765 constitute chapter 3 (entitled "Revenue Cutters and Boats") of title 34 (entitled "Collection of Duties upon Imports") of the Revised Statutes.

Sec. 5318. [*Vessels in addition to revenue cutters may be employed.*] In the execution of laws providing for the collection of duties on imports and tonnage, the President, in addition to the revenue-cutters in service, may employ in aid thereof such other suitable vessels as may, in his judgment, be required.
[R. S.]

Act of July 12, 1861, ch. 3, 12 Stat. L. 257.

Sec. 2748. [*Useless cutters may be sold.*] The President may from time to time cause such of the revenue-cutters as have become unfit for further service to be sold; and the proceeds shall be paid into the Treasury: *Provided*, That the Secretary of the Treasury may apply, in the purchase or construction of revenue-cutters, any unexpended balance of the proceeds of revenue-cutters

sold by him under the authority of section two of the act of twentieth April, eighteen hundred and sixty-six, chapter sixty-three. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 700; Act of April 20, 1866, ch. 63, 14 Stat. L. 40.

See further R. S. sec. 3618, under PUBLIC MONIES, *ante*, p. 548, and sec. 3692, under

ESTIMATES, APPROPRIATIONS, AND REPORTS, vol. 2, p. 915, which incorporate provisions of the Act of April 20, 1866, ch. 63, sec. 2, referred to in the text.

Sec. 2749. [*Number of officers and men.*] The officers for each revenue-vessel shall be one captain, and one first, one second, and one third lieutenant, and for each steam-vessel, in addition, one engineer and one assistant engineer; but the Secretary of the Treasury may assign to any vessel a greater number of officers whenever in his opinion the nature of the service which she is directed to perform requires it. And vessels of both descriptions shall have such number of petty officers and men as in the opinion of the Secretary are required to make them efficient for their service. [R. S.]

Act of July 25, 1861, ch. 20, 12 Stat. L. 275.

See the Act of April 12, 1902, ch. 501, *infra*, p. 778.

Sec. 2750. [*Grades of engineers.*] The grades of engineers shall be chief engineer, and first and second assistant engineer, with the pay and relative rank of first, second, and third lieutenant, respectively. [R. S.]

Act of Feb. 4, 1863, ch. 20, 12 Stat. L. 639.
See further provisions set forth *infra*.

Provision for engineer officers, their rank

and grade, is contained in the Act of April 12, 1902, ch. 501, *infra*, p. 778.

Sec. 2751. [*Appointment of commissioned officers.*] The commissioned officers of the revenue-cutter service shall be appointed by the President, by and with the advice and consent of the Senate. [R. S.]

Act of Feb. 4, 1863, ch. 20, 12 Stat. L. 639.

What officers included.—This provision was probably intended to embrace all the officers of the revenue-cutter service described in R. S. sec. 2749, other than those there classified as petty officers. (1883) 17 Op. Atty-Gen. 532.

Assistant engineers in revenue-cutter service should be appointed by the President

with the concurrence of the Senate. (1883) 17 Op. Atty-Gen. 532.

Removal.—Officers in the revenue-cutter service belong to the civil service of the United States, as contradistinguished from the naval and military, and are subject to removal by the President with the concurrence of the Senate. (1877) 15 Op. Atty-Gen. 396. See also (1879) 16 Op. Atty-Gen. 288.

Sec. 2752. [*Qualifications of captains and lieutenants.*] No person shall be appointed to the office of captain, first, second, or third lieutenant, of any revenue-cutter, who does not adduce competent proof of proficiency and skill in navigation and seamanship. [R. S.]

Act of March 2, 1855, ch. 141, 10 Stat. L. 630.

[*Cadets — appointment.*] * * * Hereafter upon the occurring of a vacancy in the grade of third lieutenant in the Revenue Marine Service, the Secretary of the Treasury may appoint a cadet, not less than eighteen nor more than twenty-five years of age, with rank next below that of third lieutenant, whose pay shall be three-fourths that of a third lieutenant, and who shall not be appointed to a higher grade until he shall have served a satisfactory probationary term of two years and passed the examination required by the regulations of said service; and upon the promotion of such cadet another may

be appointed in his stead; but the whole number of third lieutenants and cadets shall at no time exceed the number of third lieutenants now authorized by law. * * * [19 Stat. L. 107.]

This is from the Sundry Civil Appropriation Act of July 31, 1876, ch. 246.

Effect of suspension and reinstatement. — The cadet in the revenue-marine service who was appointed after the suspension of a third lieutenant, is not affected by his rein-

statement; there having been at the time of the appointment an actual vacancy in the service which the secretary of the treasury was authorized thus to fill. (1879) 16 Op. Atty.-Gen. 288.

Sec. 2753. [Superseded.]

This section was as follows:

"SEC. 2753. [Compensation of officers of revenue-cutter service.] The compensation of the officers of the revenue-cutter service shall be at the following rates while on duty:

"Captains, twenty-five hundred dollars a year each.

"First lieutenants and chief engineers, eighteen hundred dollars a year each.

"Second lieutenants and first assistant engineers, fifteen hundred dollars a year each.

"Third lieutenants and second assistant engineers, twelve hundred dollars a year each.

"And at the following rates while on leave of absence or while waiting orders:

"Captains, eighteen hundred dollars a year each.

"First lieutenants and chief engineers, fifteen hundred dollars a year each.

"Second lieutenants and first assistant engineers, twelve hundred dollars a year each.

"Third lieutenants and second assistant engineers, nine hundred dollars a year each." Act of Feb. 28, 1867, ch. 101, 14 Stat. L. 416.

It was superseded by the provisions of the Act of April 12, 1902, ch. 501, sec. 3, *infra*, p. 779.

[SEC. 1.] [*Chief of division — engineer in chief.*] * * * Division of revenue-cutter service: * * * That the Secretary of the Treasury shall detail a captain of the Revenue-Cutter Service who shall be chief of the division of Revenue-Cutter Service, and a chief engineer, who shall be engineer in chief of said Service, but no additional pay or emoluments shall be allowed on account of such detail. * * * [28 Stat. L. 171.]

This is from the Legislative, Executive, and Judicial Appropriation Act of July 31, 1894, ch. 174.

Change of designation. — The secretary of the treasury on Aug. 10, 1894, issued the following order in connection with the above provision:

"Notice is hereby given that under the pro-

visions of the Act of Congress approved July 31, 1894, 'making appropriations for the legislative, executive, and judicial expenses of the government for the fiscal year ending June 30, 1895, and for other purposes,' the title of the division of revenue marine of the secretary's office is changed to 'division of revenue-cutter service.'"

[SEC. 1.] [*Engineer in chief — rank and pay.*] * * * That the chief engineer of the Revenue-Cutter Service, detailed as engineer in chief of said Service, under the provisions of the legislative appropriation Act of July thirty-first, eighteen hundred and ninety-four, shall hereafter receive the duty pay and have the relative rank of a captain of the Revenue-Cutter Service. * * * [29 Stat. L. 149.]

This is from the Legislative, Executive, and Judicial Appropriation Act of May 28, 1896, ch. 252.

[SEC. 1.] [*Pay, etc., of chief engineer who has held office of engineer in chief.*] * * * That any chief engineer of the Revenue-Cutter Service who has held the office of engineer in chief shall hereafter receive the pay and emoluments of a captain of said service, and shall be eligible for appointment

to the office of captain of engineers in said service, with the pay and emoluments of such captain. * * * [30 Stat. L. 17.]

This is from the Sundry Civil Appropriation Act of June 4, 1897, ch. 2.

Office created, pay and appointment. — This provision creates the office of captain of engineers; the pay is that of a captain of the revenue service, and the appointment is to be made from the chief engineers who have held the office of engineer in chief, and by the President by and with the advice and

consent of the Senate. (1897) 21 Op. Atty-Gen. 551.

The word "such" ordinarily refers to the next immediate antecedent, but not necessarily; never when the purpose of the section in which it is used would thereby be impaired. (1897) 21 Op. Atty-Gen. 551.

The words "such captain" must be held to refer to the captain of the revenue service. (1897) 21 Op. Atty-Gen. 551.

[SEC. 1.] [*Constructor.*] * * * That the President be, and is hereby, authorized to appoint, by and with the advice and consent of the Senate, one constructor in and for the Revenue-Cutter Service, who shall have the relative rank and pay of a first lieutenant in said service, as prescribed in section twenty-seven hundred and fifty-three, Revised Statutes: * * * [30 Stat. L. 604.]

This is from the Sundry Civil Appropriation Act of July 1, 1898, ch. 546.

An Act To promote the efficiency of the Revenue-Cutter Service.

[Act of April 12, 1902, ch. 501, 32 Stat. L. 100.]

[SEC. 1.] [*Officers of Revenue-Cutter Service — rank of engineers and constructor.*] That on and after the passage of this Act the commissioned officers of the Revenue-Cutter Service shall be as follows: Captains, first lieutenants, second lieutenants, third lieutenants, captain of engineers, chief engineers, first assistant engineers, second assistant engineers, and constructor; and the captain of engineers, chief engineers, first assistant engineers, second assistant engineers shall have the rank of captain, first, second, and third lieutenants, respectively; and the constructor shall have the rank of first lieutenant: *Provided, however,* There shall be no increase in the number of officers upon the active list over the present number in each class or grade. [32 Stat. L. 100.]

SEC. 2. [*Relative rank of officers — rank and authority when co-operating with Navy.*] That the said commissioned officers shall rank as follows: Captains with majors in the Army and lieutenant-commanders in the Navy; first lieutenants with captains in the Army and lieutenants in the Navy; second lieutenants with first lieutenants in the Army and lieutenants (junior grade) in the Navy; third lieutenants with second lieutenants in the Army and ensigns in the Navy: *Provided,* That whenever forces of the Navy and Revenue-Cutter Service shall be serving in cooperation pursuant to law (section twenty-seven hundred and fifty-seven, Revised Statutes), the officers of the Revenue-Cutter Service shall rank as follows: Captains with and next after lieutenant-commanders in the Navy; first lieutenants with and next after lieutenants in the Navy; second lieutenants with and next after lieutenants (junior grade) in the Navy; third lieutenants with and next after ensigns in the Navy: *Provided further,* That no provision of this Act shall be construed as giving any officer of the Revenue-Cutter Service military or other control at any time over any vessel, officer, or man of the naval service. Nor shall any naval officer exercise such military or other control over any vessel, officer, or man of the Revenue-Cutter Service, except by direction of the President. [32 Stat. L. 100.]

SEC. 3. [*Pay and allowances.*] That the commissioned officers of the United States Revenue-Cutter Service shall hereafter receive the same pay and allowances, except forage, as are now or may hereafter be provided by law for officers of corresponding rank in the Army, including longevity pay. [32 Stat. L. 100.]

SEC. 4. [*Retirement.*] That when any officer in the Revenue-Cutter Service has reached the age of sixty-four years he shall be retired by the President from active service; and when any officer has become incapable of performing the duties of his office he shall be either placed upon the retired waiting-orders list or dropped from the service by the President, as hereinafter provided. [32 Stat. L. 100.]

This and sections 5-9 following supersede the provisions of Act of March 2, 1895, ch. 189, which read as follows:

"That the President of the United States is hereby authorized to convene a board, to be composed of three surgeons of the Marine-Hospital Service, to examine and report upon all officers now in the Revenue-Cutter Service who, through no vicious habits of their own, are now incapacitated by reason of the infirmities of age or physical or mental disability to efficiently perform the duties of their respective offices. And such officers as, under the terms of this Act, may be reported by said board to be so permanently incapacitated shall be placed on waiting orders

out of the line of promotion, with one-half active duty pay, and the vacancies thereby created in the active list of the officers shall be filled by promotion in the order of seniority, as now provided by law: *Provided, however,* That no such promotion shall be made until the professional qualifications of the candidate shall have been determined by written examination before a board of officers of the Revenue-Cutter Service convened by the Secretary of the Treasury for that purpose: *Provided further,* That the number of officers upon the active list now authorized by law shall not be increased by this Act." [28 Stat. L. 920.]

SEC. 5. [*Retiring board — composition and duties.*] That the Secretary of the Treasury, under the direction of the President, shall from time to time assemble a Revenue-Cutter Service retiring board, composed of officers of the Revenue-Cutter Service and medical officers of the Marine-Hospital Service, consisting of not less than five commissioned officers, two-fifths of whom shall be selected from medical officers of the Marine-Hospital Service, for the purpose of examining and reporting on such officers of the Revenue-Cutter Service as may be ordered by the Secretary of the Treasury to appear before it; and the members of said board shall be sworn, in every case, to discharge their duties honestly and impartially, the oath to be administered to the members by the president of the board, and to him by the junior member or recorder; and such board shall inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers as may be necessary for that purpose; and when the board finds an officer incapacitated for active service it shall also find and report the cause which in its judgment has produced his incapacity, whether such cause is an incident of service, whether due to his own vicious habits, or the infirmities of age, or physical or mental disability. The proceedings and decisions of the board shall be transmitted to the Secretary of the Treasury, and shall by him be laid before the President for his approval or disapproval and his orders in the case. [32 Stat. L. 100.]

SEC. 6. [*Retirement to waiting-orders list.*] That when a board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of service, or is due to the infirmities of age, or physical or mental disability, and not his own vicious habits, and such decision is approved by the President, he shall be retired from active service and placed upon a retired waiting-orders list. Officers thus retired may be assigned to such

duties as they may be able to perform, in the discretion of the Secretary of the Treasury. [*32 Stat. L. 101.*]

Effect of retirement on rank.—Officers of the revenue-cutter service who have been placed upon permanent waiting orders are withdrawn from the line of promotion, but may be restored to the service in their former rank when their disability ceases. (1895) 21 Op. Atty.-Gen. 286.

Number of officers.—There is no legal lim-

itation of the number of these officers. (1895) 21 Op. Atty.-Gen. 286.

An officer is "permanently incapacitated," within the meaning of this Act, when his disability appears to be chronic or of indefinite future duration. (1895) 21 Op. Atty.-Gen. 286.

SEC. 7. [*Removals for cause.*] That when a board finds that an officer is incapacitated for active service, and that such incapacity is the result of his own vicious habits and not due to any incident of service, and its decision shall be approved by the President, the officers shall be dropped from the service. [*32 Stat. L. 101.*]

SEC. 8. [*Promotions — examinations.*] That when any commissioned officer is retired from active service, the next officer in rank shall be promoted according to the established rules of the service, and the same rule of promotion shall be applied successively to the vacancies consequent upon such retirement: *Provided*, That all promotions shall be subject to examination to determine the professional qualifications of the candidates, and such examination shall be wholly written before a board of officers of the Revenue-Cutter Service, and their physical qualifications shall be reported upon by a board of medical officers of the Marine-Hospital Service; and such board shall be convened by the Secretary of the Treasury whenever the exigencies of the service require. [*32 Stat. L. 101.*]

SEC. 9. [*Retired pay.*] That all officers borne upon the retired or permanent waiting-orders list at the date of the passage of this Act, or hereafter, shall receive seventy-five per centum of the duty pay, salary, and increase of the rank upon which they have been or may be retired: *Provided*, That no longevity increase of pay shall be allowed for any length of service accruing after retirement. [*32 Stat. L. 101.*]

SEC. 10. [*Repeal.*] That all laws or parts of laws inconsistent or in conflict with the provisions of this Act be, and the same are hereby, repealed. [*32 Stat. L. 101.*]

[**SEC. 1.**] [*Pay of cadets.*] * * * That on and after the passage of this Act the pay of cadets in the Revenue-Cutter Service shall be five hundred dollars per annum and one ration per day, in lieu of the rates at present authorized by law, chapter two hundred and forty-six, paragraph four, Act July thirty-first, eighteen hundred and seventy-six; * * * [*28 Stat. L. 378.*]

This is from the Sundry Civil Appropriation Act of Aug. 18, 1894, ch. 301.

Sec. 2754. [*Wages of petty officers and crews.*] The wages of petty officers and seamen of the revenue-cutter service shall not exceed the average wages paid for like services on the Atlantic or Pacific coasts, respectively, in the merchant service. [*R. S.*]

Act of Feb. 4, 1863, ch. 20, 12 Stat. L. 640.

[**SEC. 1.**] [*Allotment of pay.*] * * * That the Secretary of the Treasury be, and he is hereby, authorized to permit officers and others of the Revenue-

Cutter Service to make allotments from their pay, under such regulations as he may prescribe, for the support of their families or relatives, for their own savings, or for other proper purposes, during such time as they may be absent at sea, on distant duty, or under other circumstances warranting such action. * * * [29 Stat. L. 421.]

This is from the Sundry Civil Appropriation Act of June 11, 1896, ch. 420.

Sec. 2755. [*Officers on duty entitled to one Navy ration per day.*] Each officer of the revenue-cutter service, while on duty, shall be entitled to one Navy ration per day. [R. S.]

Act of Feb. 28, 1867, ch. 101, 14 Stat. L. 416.

But see Act of April 12, 1902, ch. 501, sec. 3, *ante*, p. 779.

Sec. 2756. [*Contracts for rations authorized.*] The Secretary of the Treasury may cause contracts to be made for the supply of rations for the officers and men of the revenue-cutters. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 699.

[SEC. 1.] [*Clothing for enlisted men.*] That the Secretary of the Treasury is authorized to purchase from the appropriation for the maintenance of the Revenue-Cutter Service uniform clothing for the enlisted men of said service, the same to be sold to the crews of vessels in service: *Provided*, That the actual cost of the clothing thus sold to enlisted persons shall be withheld from their pay and repaid to said appropriation. * * * [30 Stat. L. 604.]

This is from the Sundry Civil Appropriation Act of July 1, 1898, ch. 546.

Sec. 2757. [*Revenue officers to co-operate with the Navy.*] The revenue-cutters shall, whenever the President so directs, co-operate with the Navy, during which time they shall be under the direction of the Secretary of the Navy, and the expenses thereof shall be defrayed by the Navy Department. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 699.

An order issued by the President to the secretary of the treasury places the revenue cutters of the revenue-marine service in such co-operation with the navy as is contemplated by this section. (1890) 19 Op. Atty.-Gen. 505.

Sec. 2758. [*Powers of the Secretary of the Treasury.*] The Secretary of the Treasury may direct the performance of any service by the revenue-vessels which, in his judgment, is necessary for the protection of the revenue. [R. S.]

Act of July 25, 1861, ch. 20, 12 Stat. L. 275.

[*Revenue cutters to be exclusively for public service.*] * * * Hereafter revenue cutters shall be used exclusively for the public service, and in no way for private purposes. * * * [23 Stat. L. 199.]

This is from the Sundry Civil Appropriation Act of July 7, 1884, ch. 332.

Sec. 2759. [*Aid to vessels on the lakes.*] The revenue-cutters on the northern and northwestern lakes, when put in commission, shall be specially charged with aiding vessels in distress on the lakes. [R. S.]

Act of July 15, 1870, ch. 292, 16 Stat. L. 309.

Sec. 2760. [*Powers and duties of officers of revenue-cutters.*] The officers of the revenue-cutters shall respectively be deemed officers of the customs, and

shall be subject to the direction of such collectors of the revenue, or other officers thereof, as from time to time shall be designated for that purpose. They shall go on board all vessels which arrive within the United States or within four leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastening on the hatches and other communications with the hold of any vessel, and shall remain on board such vessels until they arrive at the port or place of their destination. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 700.

Sec. 2761. [*Returns.*] The master of any revenue-cutter shall make a weekly return to the collector, or other officer of the district under whose direction it is placed, of the transactions of the cutter, specifying the vessels that have been boarded, their names and descriptions, the names of the masters, from what port or place they last sailed, whether laden or in ballast, to what nation belonging, and whether they have the necessary manifests of their cargoes on board, and generally all such matters as it may be necessary for the officers of the customs to know. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 700.

Sec. 2762. [*Further duties of officers.*] The officers of revenue-cutters shall perform, in addition to the duties hereinbefore prescribed, such other duties for the collection and security of the revenue as from time to time shall be directed by the Secretary of the Treasury, not contrary to law. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 700.

Sec. 2763. [*Employment of small boats authorized.*] The collector of each district may, with the approval of the Secretary of the Treasury, provide and employ such small open row and sail boats, and persons to serve in them, as shall be necessary for the use of the surveyors and inspectors in going on board of vessels and otherwise, for the better detection of frauds. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 700.

Sec. 2764. [*Ensigns and pendants.*] The cutters and boats employed in the service of the revenue shall be distinguished from other vessels by an ensign and pendant, with such marks thereon as shall be prescribed by the President. If any vessel or boat, not employed in the service of the revenue, shall, within the jurisdiction of the United States, carry or hoist any pendant or ensign prescribed for vessels in such service, the master of the vessel so offending shall be liable to a penalty of one hundred dollars. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 700.

Sec. 2765. [*Immunities of officers.*] Whenever any vessel liable to seizure or examination does not bring-to, on being required to do so, or on being chased by any cutter or boat which has displayed the pendant and ensign prescribed for vessels in the revenue service, the master of such cutter or boat may fire at or into such vessel which does not bring-to, after such pendant and ensign has been hoisted, and a gun has been fired by such cutter or boat as a signal; and such master, and all persons acting by or under his direction, shall be indemnified from any penalties or actions for damages for so doing. If any person is killed or wounded by such firing, and the master is prosecuted or arrested therefor, he shall be forthwith admitted to bail. [R. S.]

Act of March 2, 1799, ch. 22, 1 Stat. L. 700, 701.

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[I. NAVIGABLE WATERS AND REGULATION OF USE.]

Sec. 2476. [*Navigable rivers within public lands to be public highways.*]

All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both. [R. S.]

Act of May 18, 1796, ch. 29, 1 Stat. L. 468;
Act of March 3, 1803, ch. 27, 2 Stat. L. 235.

Power of government.—The power vested in the general government to regulate interstate and foreign commerce involves the control of the waters of the United States which are navigable in fact, so far as it may be necessary to insure their free navigation, when by themselves or their connection with other waters they form a continuous channel for commerce among the states or with foreign countries. *Escanaba, etc.*, Transp. Co. v. Chicago, (1882) 107 U. S. 678.

The intention of Congress has been clearly manifested to ordain all rivers actually navigable, as common-law rivers, whether or not the tide ebbs and flows. *Russell v. The Brig Empire State*, (1857) Newb. Adm. 541, 21 Fed. Cas. No. 12,145.

The common-law test of the navigability of waters, that they are subject to the ebb and flow of the tide, grew out of the fact that in England there are no waters navigable in fact, or to any great extent, which are not also affected by the tide. That test has long since been discarded in this country. *Escanaba, etc.*, Transp. Co. v. Chicago, (1882) 107

U. S. 678.

What are navigable waters.—All our waters are navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from the navigable waters of the states, where they form in their ordinary condition by themselves or by uniting with other waters a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water. (1891) 20 Op. Atty.-Gen. 101. See also *The Daniel Ball*, (1870) 10 Wall. (U. S.) 557; *The Montello*, (1870) 11 Wall. (U. S.) 411; (1874) 20 Wall. (U. S.) 430; *Cardwell v. American Bridge Co.*, (1885) 113 U. S. 205.

"Those rivers are regarded as public navigable rivers in law, which are navigable in fact. * * * 'They are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.'"

Packer v. Bird, (1891) 137 U. S. 661. See also *Rhea v. Newport, etc.*, R. Co., (1892) 50 Fed. Rep. 16.

What determines navigability.—It is not of consequence that the stream was originally non-navigable, or that it was artificially constructed, or that it is wholly within one state, or that it has always been practically controlled by the state or city. The use now actually made of the waterway, its practical dedication to the public, the importance, amount, and nature of its commerce, and the source and destination of the commodities borne upon it, establish the character of the navigation. (1891) 20 Op. Atty-Gen. 101.

The mere fact that logs, poles, and rafts are floated down a stream occasionally, and in times of high water, does not make it a navigable river. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 707.

The fact that it is a physical possibility to navigate a stream by boats, or the mere capacity to pass a boat of any size, however small, from one stream or rivulet to another, is not sufficient to constitute a navigable water of the United States. *Leovy v. U. S.*, (1900) 177 U. S. 621, *reversing* (C. C. A. 1899) 92 Fed. Rep. 344.

The navigability of a stream for the purpose of bringing it within the terms "navigable waters of the United States" does not depend upon the mode by which commerce is conducted upon it, as whether by steamers or sailing vessels, or Durham boats; nor upon the difficulties attending navigation, such as those made by falls, rapids, and sandbars, even though these be so great that while they last they prevent the use of the best means, such as steamboats, for carrying on commerce. It depends upon the fact whether the river in its natural state affords a channel for useful commerce. *The Montello*, (1874) 20 Wall. (U. S.) 430.

An obstruction such as natural falls, etc., does not destroy the character of the river above them, if it be navigable. *Spooner v. McConnell*, (1838) 1 McLean (U. S.) 337, 22 Fed. Cas. No. 13,245.

The Rio Grande within the limits of New Mexico is not navigable. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 707.

Fox river, Wis., is within the rule prescribed by the Supreme Court to determine whether a river is navigable water of the United States. It has always been navigable in fact, and not only capable of use but actually used as a highway for commerce in the only mode in which commerce could be conducted before the navigation of the river was improved. *The Montello*, (1874) 20 Wall. (U. S.) 430.

The Chicago river and its branches must be deemed navigable waters of the United States, over which Congress, under its commercial power, may exercise control to the extent necessary to protect, preserve, and improve their free navigation. *Escanaba, etc., Transp. Co. v. Chicago*, (1882) 107 U. S. 678; (1891) 20 Op. Atty-Gen. 101.

No right was reserved by this Act to the beds of non-navigable streams, and it was not the policy of the government to be a land-

owner in the states. *Indiana v. Milk*, (1882) 11 Fed. Rep. 389.

Effect of repealing Act declaring navigability.—An Act repealing a prior Act declaring a stream navigable does not invest the riparian owners with title to the bed of the river, nor are the boundaries of their lands extended thereby. *Chicago, etc., R. Co., v. Porter*, (1887) 72 Iowa 426; *Serrin v. Grefe*, (1885) 67 Iowa 196; *Steele v. Sanchez*, (1887) 72 Iowa 65; *Wood v. Chicago, etc., R. Co.*, (1883) 60 Iowa 456.

Application of common-law rules of riparian ownership.—Congress, in providing as it does, in one or more Acts relating to the survey and sale of public lands bordering upon rivers, that navigable rivers within the territory to be surveyed should be deemed to be public highways, and that where the opposite banks of any stream, not navigable, should belong to different persons, the stream and the bed thereof should become common to both, meant to enact that the common-law rules of riparian ownership should apply in the latter case, but that the title to lands bordering on navigable streams should stop at the stream, and not come to the *medium filum*. But such riparian proprietors have the same right to construct suitable landings and wharves, for the convenience of commerce and navigation, as riparian proprietors on navigable waters, affected by the ebb and flow of tide. *St. Paul, etc., R. Co. v. Schurmeir*, (1868) 7 Wall. (U. S.) 272. See also *Packer v. Bird*, (1891) 137 U. S. 661.

Grant on pond or lake.—"While a general grant of land on a river or stream, non-navigable, extends the line of the grantee to the middle or thread of the current, a grant to a natural pond or lake extends only to the water's edge." *Indiana v. Milk*, (1882) 11 Fed. Rep. 389, *citing* *Wheeler v. Spinola*, (1873) 54 N. Y. 377; *Canal Com'rs v. People*, (1830) 5 Wend. (N. Y.) 423; *Dillingham v. Smith*, (1849) 30 Me. 370; *Mansur v. Blake*, (1873) 62 Me. 38; *Paine v. Woods*, (1871) 108 Mass. 160; *State v. Gilmanton*, (1838) 9 N. H. 461; *Mariner v. Schulte*, (1861) 13 Wis. 692; *Delaplaine v. Chicago, etc., R. Co.*, (1877) 42 Wis. 214; *Boorman v. Sunnuchs*, (1877) 42 Wis. 233; *Seaman v. Smith*, (1860) 24 Ill. 521; *Austin v. Rutland R. Co.*, (1872) 45 Vt. 215.

Non-navigable streams are usually narrow, and the lines of riparian owners can be extended into them at right angles without interference or confusion, and without serious injustice to any one. It was therefore natural when such streams were called for as boundaries, to hold that the real line between opposite shore owners was the thread of the current. The rights of the riparian proprietors in the bed of the stream itself were thus clearly defined. But when this rule is attempted to be applied to lakes and ponds, practical difficulties are encountered. They have no current, and being more or less circular, it would hardly be possible to run the boundary lines beyond the water's edge, so as to define the rights of shore owners in the beds. *Indiana v. Milk*, (1882) 11 Fed. Rep. 389.

In the case of land bounded on a non-navigable lake the United States assumes the position of a private owner subject to the general law of the state so far as its conveyances are concerned. Such cases are not affected by R. S. secs. 2476, 5251. *Hardin v. Shedd*, (1903) 190 U. S. 508.

Holding in severalty.—In *St. Paul, etc., R. Co. v. Schurmeir*, (1868) 7 Wall. (U. S.) 272, this section was interpreted to mean that instead of the owners of opposite banks of a non-navigable stream being tenants in common of the bed, each held in severalty to the centre of the stream.

Sec. 5244. [*Certain rivers in Alabama to be free from tolls.*] The Tennessee, Coosa, Cahawba, and Black Warrior Rivers, within the State of Alabama, shall be forever free from toll for all property belonging to the United States, and for all persons in their service, and for all citizens of the United States, except as to such tolls as may be allowed by act of Congress. [R. S.]

Act of May 23, 1828, ch. 75, 4 Stat. L. 290. the Revised Statutes, entitled "Rivers and Sections 5244-5255 constitute title 63 of Harbors."

Sec. 5245. [*Toll on canals on the Tennessee.*] The assent of the United States is hereby given to any act which the legislature of the State of Alabama may pass for imposing a toll on the use of such parts of the canal or canals which have been, or may be, constructed at or around the Muscle and Colbert's Shoals of the river Tennessee. Such tolls shall be expended exclusively on the canals, and shall not exceed in amount the sum required to keep them in repair, and to defray the expenses of lock-tenders, collectors, superintendents, and managers. This section shall not affect the exemption of the property of the United States, and all persons in their service, from any toll whatever. An annual report shall be made to the Secretary of the Treasury of the United States, of the rate and amount of tolls charged or collected on said canals, and their application. [R. S.]

Act of June 23, 1836, ch. 119, 5 Stat. L. 57.

Sec. 5246. [*The Des Moines river.*] The Des Moines River shall forever remain free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing along the same. [R. S.]

Act of Aug. 8, 1846, ch. 103, 9 Stat. L. 78; Act of Jan. 20, 1870, ch. 7, 16 Stat. L. 61.

Sec. 5247. [*Michigan City harbor.*] The passage of vessels to and from the harbor of Michigan City, in Indiana, shall be free and not subject to toll or charge. [R. S.]

Act of June 23, 1866, ch. 138, 14 Stat. L. 73; Act of March 2, 1867, ch. 144, 14 Stat. L. 421.

Sec. 5248. [*The Iowa river.*] So much of the Iowa River within the State of Iowa as lies north of the town of Wapello shall not be deemed a navigable river or public highway, but dams and bridges may be constructed across it. [R. S.]

Res. of July 13, 1868, No. 55, 15 Stat. L. 257; Act of May 6, 1870, ch. 92, 16 Stat. L. 121.

Sec. 5249. [*Wisconsin and Fox rivers.*] All tolls and revenues derived from the improvements made or acquired in the Wisconsin River and the line of water communication between the Wisconsin River and the Fox River, after providing for the current expenses of operating and keeping the same in repair, shall be paid into the Treasury; and whenever the United States shall be reimbursed for all sums advanced for the same, with interest thereon, then the

tolls shall be reduced to the least sum which, together with other revenues properly applicable thereto, if any, shall be sufficient to operate and keep the improvements in repair. [R. S.]

Act of July 7, 1870, ch. 210, 16 Stat. L. 190.
Tolls abolished.— See Act of July 5, 1884, ch. 229, sec. 4, *infra*, p. 791. "The effect of this enactment," said Attorney-General Gar-

land, 18 Atty.-Gen. 191, "was to abolish the tolls theretofore levied by the government upon vessels passing through the works of the Fox and Wisconsin Rivers improvement."

Sec. 5250. [*Maquoketa river.*] The assent of Congress is given to the construction of bridges across the Maquoketa River, within the State of Iowa, with or without draws, as may be provided by the laws of that State. [R. S.]

Res. of July 13, 1868, No. 55, 15 Stat. L. 257.

Sec. 5251. [*Rivers in Louisiana.*] All the navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways. [R. S.]

Act of March 3, 1811, ch. 46, 2 Stat. L. 666.

Sec. 5254. [*Piers and cribs on the Mississippi and St. Croix rivers.*] The owners of saw-mills on the Mississippi River and the Saint Croix River in the States of Wisconsin and Minnesota, are authorized and empowered, under the direction of the Secretary of War, to construct piers or cribs in front of their mill property on the banks of the river, for the protection of their mills and rafts against damage by floods and ice: *Provided, however,* That the piers or cribs so constructed shall not interfere with or obstruct the navigation of the river. And in case any pier or crib constructed under authority of this section shall at any time, and for any cause, be found to obstruct the navigation of the river, the Government expressly reserves the right to remove or direct the removal of it, at the cost and expense of the owners thereof. [R. S.]

Act of March 3, 1873, ch. 278, 17 Stat. L. 606.

This section was amended by the Act of May 1, 1882, ch. 112, 22 Stat. L. 52, by adding

after the words "Mississippi River" the words "and the Saint Croix River in the States of Wisconsin and Minnesota," as above given.

Sec. 5255. [*Louisville and Portland canal.*] The Secretary of the Treasury is directed to assume, on behalf of the United States, the control and management of the Louisville and Portland Canal in conformity with the terms of the joint resolution of the legislature of the State of Kentucky, approved March twenty-eighth, eighteen hundred and seventy-two, at such time and in such manner as in his judgment the interests of the United States, and the commerce thereof, may require: *Provided,* That after the United States shall assume control of said canal, the tolls thereon on vessels propelled by steam shall be reduced to twenty-five cents per ton, and on all other vessels in proportion. [R. S.]

Act of March 3, 1873, ch. 233, 17 Stat. L. 563.

By the Act of May 11, 1874, ch. 165, 18 Stat. L. 43, provision was made for the payment of the bonds of the canal company, for a reduction of tolls, and for management by the secretary of war. By the Act of July 5, 1884, ch. 229, sec. 7, 23 Stat. L. 148, authority is given to the secretary of war, to make, post, and enforce regulations for the use

of the canal, and these latter provisions were re-enacted by the Act of Sept. 30, 1888, ch. 1041, 25 Stat. L. 497. By the Act of May 1, 1886, ch. 70, 24 Stat. L. 17, partition was allowed of certain adjoining lands. By the Act of Sept. 30, 1890, ch. 1130, 26 Stat. L. 554, the use of a part of the property by private parties was permitted and conditions fixed for its termination.

Tolls abolished.— See the following text.
Volume VI.

An act to abolish all tolls at the Louisville and Portland Canal.

[*Act of May 18, 1880, ch. 95, 21 Stat. L. 141.*]

[*Tolls on Louisville and Portland Canal abolished — expenses, how paid.*] That after the first day of July, eighteen hundred and eighty, no tolls shall be charged or collected at the Louisville and Portland Canal, but the Secretary of War shall be authorized to draw his warrant from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said canal in repair. [21 Stat. L. 141.]

Authority of secretary of treasury to pay warrants. — This Act, in authorizing the secretary of war to draw warrants from time to time upon the secretary of the treasury for the purpose indicated, empowered the latter to pay the warrants so drawn, by legal

and almost necessary inference, as fully as if it had been expressly stated that they should be paid out of any money in the treasury not otherwise appropriated. (1880) 16 Op. Atty.-Gen. 557.

SEC. 4. [*Tolls on canals or other improvements of United States abolished—expenses of operating—reports.*] That no tolls or operating charges whatsoever shall be levied or collected upon any vessel or vessels, dredges, or other passing water-craft through any canal or other work for the improvement of navigation belonging to the United States; and for the purpose of preserving and continuing the use and navigation of said canals, rivers, and other public works without interruption, the Secretary of War, upon the application of the chief engineer in charge of said works, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated: *Provided, however,* That an itemized statement of said expenses shall accompany the annual report of the chief of engineers. [23 Stat. L. 147.]

This is from the River and Harbor Appropriation Act of July 5, 1884, ch. 229. The provision abolishing tolls was repeated from the Act of Aug. 2, 1882, ch. 375, 22 Stat. L. 209.

What works included. — The words "said canals, rivers, and other public works" and "said works" were not meant to include all those public works which are described in the preceding parts of the same Act. (1885) 18 Op. Atty.-Gen. 188.

Appropriation applicable to what works. — The indefinite appropriation made by this section is not applicable to river and harbor improvements generally, but only to a par-

ticular class of public works, such as canals, locks, etc., in the use of which, both operating expenses and expenses for repairs are necessarily incurred. (1885) 18 Op. Atty.-Gen. 188.

Appropriation for Fox and Wisconsin rivers. — A necessity existed for making some provision to meet the current expenses of operating and keeping in repair the works of the Fox and Wisconsin rivers improvement, since the abolishment of tolls thereon; and there can be no doubt that the indefinite appropriation provided by this section was meant to apply to those works. (1885) 18 Op. Atty.-Gen. 188.

SEC. 14. [*Des Moines Rapids Canal dry dock.*] That the dry dock constructed at the Des Moines Rapids Canal under the provisions of acts of Congress approved August second, eighteen hundred and eighty-two, July fifth, eighteen hundred and eighty-four, August fifth, eighteen hundred and eighty-six, and August eleventh, eighteen hundred and eighty-eight, shall be considered an integrant part of the Des Moines Rapids Canal, and the act of Congress approved March third, eighteen hundred and eighty-one, which provides for

expenses of operating and care of Des Moines Rapids and other canals, and the act of Congress approved July fifth, eighteen hundred and eighty-four, which provides penalties for violation of rules and regulations prescribed by the Secretary of War, shall also apply to the said dry-dock. [26 Stat. L. 455.]

This and section 16 following are from the River and Harbor Appropriation Act of Sept. 19, 1890, ch. 907.

SEC. 16. [*Buffalo Bayou Ship-Channel, Galveston Bay, Tex., free to navigation, etc.*] That whereas the United States, in compliance with its obligation to the Buffalo Bayou Ship-Channel Company, has constructed a ship-channel through Galveston Bay from the Bolivar Channel to the channel constructed by said Buffalo Bayou Ship-Channel Company, known as Morgan's Cut, for vessels of twelve feet draught, it is therefore declared that the ship-channel through Galveston Bay from Bolivar Channel to the point where the San Jacinto River enters what is known as the Morgan Channel, excavated through Morgan's Point, is now the property of the United States and is declared to be free to navigation; and the Secretary of War is hereby directed to keep said ship-channel free to navigation: * * * [26 Stat. L. 456.]

See note to section 14, *supra*.

The omitted part of the section relates to

the payment to the Buffalo Bayou Ship Channel Co., for property taken.

SEC. 5. [*Regulations for navigation of South Pass, Mississippi river — violation — penalty.*] That the Secretary of War be, and is hereby, authorized to make such rules and regulations for the navigation of the South Pass of the Mississippi River as to him shall seem necessary or expedient for the purpose of preventing any obstruction to the channel through said South Pass and any injury to the works therein constructed. The term "South Pass," as herein employed, shall be construed as embracing the entire extent of channel between the upper ends of the works at the head of the Pass and the outer or sea end of the jetties at the entrance from the Gulf of Mexico; and any willful violation of any rule or regulation made by the Secretary of War in pursuance of this act shall be deemed a misdemeanor, for which the owner or owners, agent or agents, master or pilot of the vessel so offending shall be separately or collectively responsible, and on conviction thereof shall be punished by a fine of not exceeding two hundred and fifty dollars or by imprisonment not exceeding three months, at the discretion of the court. [26 Stat. L. 452.]

This is from the River and Harbor Appropriation Act of Aug. 11, 1888, ch. 800, 25 Stat. L. 424, as amended by the Act of Sept. 19, 1890, ch. 907, sec. 3, 26 Stat. L. 452.

SEC. 4. [*Regulations for use of canals — penalty for violation.*]. That it shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require; and he is also authorized to prescribe regulations to govern the speed and movement of vessels and other water craft in any public navigable channel which has been improved under authority of Congress, whenever, in his judgment, such regulations are necessary to protect such improved

channels from injury, or to prevent interference with the operations of the United States in improving navigable waters or injury to any plant that may be employed in such operations. Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court. [*32 Stat. L. 374.*]

This is from the River and Harbor Appropriation Act of Aug. 18, 1894, ch. 299, sec. 4, 28 Stat. L. 362, as amended by the Appropriation Act of June 13, 1902, ch. 1079, sec. 11, 32 Stat. L. 374. The section originally read as follows:

"SEC. 4. That it shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require. Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall knowingly and willfully violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court in the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court." [*28 Stat. L. 362.*]

The above section superseded the provisions of the Act of July 5, 1884, ch. 229, sec. 7, 23 Stat. L. 148, as amended by the Act of

Sept. 26, 1888, ch. 1041, sec. 1, 25 Stat. L. 497, as follows:

"SEC. 7. That it shall be the duty of the Secretary of War to prescribe such rules and regulations in respect to the use and administration of the Des Moines Rapids Canal, the Saint Mary's Falls Canal, the Louisville and Portland Canal, and the Saint Clair Flats Ship Canal as in his judgment the public necessity may require, which rules and regulations shall be posted in some conspicuous place for the information of the public; any person knowingly and willfully violating such rules and regulations shall be liable to a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed." [*25 Stat. L. 497.*]

Nature and effect of rules.—The rules and regulations prescribed under this section are clearly of administrative rather than legislative nature and may be relegated entirely to any executive agency, either with or without direct provisions by Congress, and such regulations have the force of law when adopted and promulgated as directed by the Act. *U. S. v. Ormsbee*, (1896) 74 Fed. Rep. 207.

SEC. 5. [*Rules and regulations governing drawbridges — penalty for violation — proceedings.*] That it shall be the duty of all persons owning, operating, and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars nor less than one thousand dollars, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any

commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: *Provided further*, That whenever, in the opinion of the Secretary of War, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law, and any violation thereof shall be punished as hereinbefore provided. [28 Stat. L. 362.]

This is from the River and Harbor Appropriation Act of Aug. 18, ch. 299.

Effect of section.—This section does not add anything to the law previously in force upon this subject except that it gives authority to the secretary of war to adopt rules and regulations to govern the opening of such drawbridges for the passage of vessels and other water craft, which rules and regulations, when made and published, shall have the force of law. (1899) 22 Op. Atty-Gen. 312.

Closing drawbridge for repairs.—It is the duty of all persons operating such draw-

bridges to open or cause them to be opened in a reasonable manner and at a reasonable time, consistent with the uses for which drawbridges are constructed for the passage of vessels. The repair of such draws and of the bridges with which they are connected is also necessary for their maintenance. It is reasonable that a sufficient time should be allowed for such repairs, and if they cannot be prosecuted without closing the bridge for a number of successive days, such closing cannot be considered as unreasonable interference with navigation. (1899) 22 Op. Atty-Gen. 312.

Sec. 6. [Enforcing regulations — procedure.] That any regulations heretofore or hereafter prescribed by the Secretary of War in pursuance of the fourth and fifth sections of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four, and any regulations hereafter prescribed in pursuance of the aforesaid section four as amended by section eleven of this Act, may be enforced as provided in section seventeen of the river and harbor Act of March third, eighteen hundred and ninety-nine, the provisions whereof are hereby made applicable to the said regulations. [32 Stat. L. 374.]

This is from the River and Harbor Appropriation Act of June 13, 1902, ch. 1072.

An Act declaring Cuivre River to be not a navigable stream.

[Act of March 3, 1900, ch. 33, 31 Stat. L. 50.]

[Cuivre River, Missouri, declared non-navigable.] That Cuivre River, in the counties of Lincoln and Saint Charles, in the State of Missouri, being the dividing line, is hereby declared not to be a navigable stream, and shall be so treated by the Secretary of War and all other authorities. [31 Stat. L. 50.]

An Act To declare a branch of the Mississippi River opposite the city of La Crosse, Wisconsin, and known as West Channel, to be unnavigable, and that the said city be relieved of necessity of maintaining a draw or pontoon bridge over said West Channel.

[Act of Feb. 23, 1901, ch. 470, 31 Stat. L. 804.]

[West Channel of Mississippi River opposite La Crosse, Wisconsin, declared non-navigable.] That the branch of the Mississippi River flowing between Grand Island and the mainland opposite the city of La Crosse, State of Wisconsin, and known as the West Channel, be, and the same is hereby, declared unnavigable. * * * [31 Stat. L. 804.]

The omitted part of the Act relates to discontinuance of the drawbridge.

An Act Declaring the Osage River to be not a navigable stream above the point where the line between the counties of Benton and Saint Clair crosses said river.

[Act of June 24, 1902, ch. 1154, 32 Stat. L. 398.]

[*Osage River, Missouri, above Benton and St. Clair counties, non-navigable.*] That the Osage River in the State of Missouri, above the point where the dividing line between the counties of Benton and Saint Clair crosses said river, is hereby declared not to be a navigable stream and shall be so treated by the Secretary of War and all other authorities. [32 Stat. L. 398.]

[II. PRESERVATION OF NAVIGABLE WATERS: STRUCTURES OR IMPROVEMENTS THEREON.]

SEC. 3. [*Injuring river and harbor improvements, how punished.*] * * * Any person who shall willfully and unlawfully injure any pier, breakwater, or other work of the United States for the improvement of rivers or harbors, or navigation in the United States, shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars. [19 Stat. L. 139.]

This is from the River and Harbor Appropriation Act of Aug. 14, 1876, ch. 267.

[SEC. 1.] [*Lights on bridges for security of navigation.*] * * * That all parties owning, occupying, or operating bridges over any navigable river shall maintain at their own expense, from sunset to sunrise, throughout the year, such lights on their bridges as may be required by the Light-House Board for the security of navigation: and in addition thereto all persons owning, occupying, or operating any bridge over any navigable river shall, in any event, maintain all lights on their bridge that may be necessary for the security of navigation. * * * [22 Stat. L. 309.]

This is from the Sundry Civil Appropriation Act of Aug. 7, 1882, ch. 433.

SEC. 8. [*Obstruction of navigation by bridges — remedies.*] That whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now or hereafter to be constructed over any of the navigable waters of the United States, under authority of the United States or of any State or Territory, is an obstruction to the free navigation of such waters, by reason of difficulty in passing the draw-opening or the raft-span of said bridge, by rafts, steamboats, or other water-craft, it shall be the duty of the said Secretary, on satisfactory proof thereof, to require the company or persons owning, controlling, or operating said bridge to cause such aids to the passage of said draw-opening or of said raft-span, or of both said draw-opening and raft-span to be constructed, placed, and maintained, at their own cost and expense, in the form of booms, dikes, piers, or other suitable and proper structures for the guiding of said rafts, steamboats, and other water-craft safely through said opening or span, or both said opening or span, as shall be specified in his order in that behalf; and on failure of the company or persons aforesaid to make and establish such additional structures within a

reasonable time, the said Secretary shall proceed to cause the same to be built or made at the expense of the United States, and shall refer the matter without delay to the Attorney-General of the United States, whose duty it shall be to institute, in the name of the United States, proceedings in any circuit or district court of the United States in which such bridge, or any part thereof, is located, for the recovery of the cost thereof; and all moneys accruing from such proceedings shall be covered into the Treasury of the United States: *Provided*, That no greater sum than fifteen thousand dollars shall be required to be expended upon any one bridge in a single year: *Provided further*, That such sum of money as may be necessary to execute the provisions of this act is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be paid on the requisition of the Secretary of War. [23 Stat. L. 148.]

This is from the River and Harbor Appropriation Act of July 5, 1884, ch. 229.

This was the first general law which clothed

the secretary of war with such power. U. S. v. Pittsburgh, etc., R. Co., (1886) 26 Fed. Rep. 113.

SEC. 2. [*Establishment of harbor lines—deposits of debris.*] That in places where harbor-lines have not been established, and where deposits of debris of mines or stamp works can be made without injury to navigation, within lines to be established by the Secretary of War, said officer may, and is hereby authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him. [24 Stat. L. 329.]

This is from the River and Harbor Appropriation Act of Aug. 5, 1886, ch. 929.

An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, by dumping or otherwise, and to punish and prevent such offenses.

[Act of June 29, 1888, ch. 496, 25 Stat. L. 209.]

[SEC. 1.] [*Depositing refuse, etc., in New York harbor and adjacent waters prohibited—penalty.*] That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor. [25 Stat. L. 209.]

This Act supersedes the provisions of the Act of Aug. 5, 1886, ch. 929, as follows:

"SEC. 3. It shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier,

wharf, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, slack, rubbish, wreck, filth, slabs, edgings, sawdust, slag, or cinders, or other refuse or mill-waste of any kind, into New York Harbor: *Provided*, That nothing herein contained shall extend, or be construed to extend, to the

casting out, unloading, or throwing out of any ship or vessel, lighter, barge, boat, or other craft, any stones, rocks, bricks, lime, or other materials used, or to be used, in or toward the building, repairing, or keeping in repair any quay, pier, wharf, weir, bridge, building, or other work lawfully erected or to be erected on the banks or sides of said harbor, or to the casting out unloading or depositing of any material excavated for the improvement of navigable waters, into such places and in such manner as may be deemed by the United States officer supervising the improvement of said harbor most judicious and practicable and for the best interests of such improvement." [24 Stat. L. 529.]

Constitutionality.—The necessities of commerce required the protection and preservation of the harbor of the chief commercial city of the country, and an Act to protect the waters of the harbor for the purposes of navigation was within the constitutional power of Congress. *Randall v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 935.

The purpose of the Act is to prevent dumping where it will injure the harbor and to prevent it nowhere else. To insure this result, the supervisor, taking the waters enumerated in the Act as the theatre of his operations, is required to draw protecting lines around the harbor. When these lines are fixed the Act becomes operative. Within them are the harbor of New York and such waters as are necessary for the protection of the harbor. Within these limits, says the Act, no dumping shall be done; without them, it is not prohibited. The supervisor had no power to issue his ukase commanding that all dumping shall be done within limits fixed by him far out in the Atlantic; limits which include waters not mentioned in the Act. *The G. L. Garlic*, (1891) 45 Fed. Rep. 380.

Not an infamous crime.—This offense is not punishable by imprisonment for a term of over one year, or at hard labor, and persons convicted thereof cannot be sentenced to imprisonment in a penitentiary. Therefore, it is not an infamous crime. *Ansburo v. U. S.*, (1895) 159 U. S. 695.

What waters included.—The bodies of water referred to are (a) the harbor of New York, (b) waters adjacent to the harbor of New York, (c) waters tributary to the harbor of New York, (d) Long Island Sound; and as to each of these bodies of water there is a restriction of the application of the Act to such waters only as are tidal. This enumeration covers not only the harbor proper but also water-ways by which commerce reaches that harbor, and it covers all such water-ways as are tidal. *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 396. But see *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 823.

In (1889) 19 Op. Atty.-Gen. 317, it was advised that the term "tributary waters" must be restricted so as to cover only such parts of the river as, in a broad sense, can be regarded as connected with the harbor of New York, and that the authority conferred did not extend to the waters of the Hudson river as far distant from New York harbor as Troy, Albany, and New Baltimore.

Statute, not supervisor, prohibits.—Under the statute it is not the supervisor of the harbor who is to prohibit dumping, etc., in the tidal waters named in the Act. The Act itself prohibits such dumping "within the limits which shall be prescribed" by that officer. These limits which he is to prescribe are the lines or boundaries on one side and the other of which respectively, such material may and may not be dumped. *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 396.

Extent of power granted to supervisor.—Congress did not delegate to the supervisor any of its power "to regulate commerce," and the included control of the navigable waters of the United States. The supervisor is not authorized to declare that dumping refuse of various kinds is obstructive or injurious to navigation and punishable. He is merely directed to overlook the detailed operation of such dumping, to the end that the deposit shall not be hurtful to navigation. *U. S. v. Romard*, (1898) 89 Fed. Rep. 156.

Limits fixed by supervisor.—The limits in either direction were not designed to be fixed by the statute itself but by the supervisor. Those limits were to be within the tributary waters, i. e., to embrace less than the whole of such tributary waters, and only such as the supervisor should specify by fixing a northerly as well as a southerly limit. *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 823.

Dumping prohibited, where.—This section does not prohibit the deposit of refuse, etc., anywhere except "in the tidal waters of New York harbor or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor." It does not prohibit deposit of such material on land anywhere; nor in all the "tributary waters," but only in such parts of the tributary waters, etc., as are "within the limits to be prescribed," i. e., not embracing the whole tributary waters. *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 823.

The primary condition of the practical application of this Act is the designation by the supervisor of fixed and certain limits, within the tributary and other waters of New York harbor and of Long Island Sound, within which the deposit of refuse, etc., is prohibited. The Act contemplates, first of all, a certain prohibited area within those waters marked by definite, certain, and intelligible limits. Refuse, dirt, mud, etc., dredged, found, or brought within those limits, becomes thenceforth prohibited material, and subject to the operation of the Act. Similar materials while outside of the prohibited limits are wholly outside of the scope of the Act. They are not prohibited materials nor within the operation of the statute. *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 823.

Deposits which do not injuriously affect the harbor are not prohibited by the Act. It was the harbor that the lawmakers had in view; it was the harbor that they sought to protect. Recognizing the fact that the usefulness of the harbor would be destroyed if its approaches were obstructed, the Act is careful to designate all waters adjacent or

tributary to the harbor, where the dumping of deposits can in any manner affect it injuriously. It will be observed, however, that dumping is not forbidden in all parts of the enumerated waters, but only in such parts of these waters as are "within the limits which shall be prescribed by the supervisor of the harbor." *The G. L. Garlic*, (1891) 45 Fed. Rep. 380.

Designation of high-water mark.—Congress has confided full power to the designated officer to fix limits for the dumping or deposit of material. The designation of a line coincident with high-water mark of the waters named in the Act as the limit within which dumping should not be allowed would be within the power conferred by the Act. *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 396.

Sufficient designation by meridian and parallel.—An order by the supervisor designating two lines, one running north and the other west from a point at the intersection of a certain meridian and a certain parallel, and expressly stating that the deposit of refuse material must take place to the east and south of those lines, prescribe the limits within which material shall not be dumped within the meaning of the Act. *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 396. See also *U. S. v. Romard*, (1898) 89 Fed. Rep. 156.

In *U. S. v. The Sadie*, (1890) 41 Fed. Rep. 823, it was held that an order of the supervisor which designates a place of deposit instead of designating with definiteness and certainty the limits of prohibition is void as an implied prohibition for unreasonableness, indefiniteness, and uncertainty, and not authorized by this section.

Where ashes were dumped in a prohibited place from the deck of an ocean steamer by her fireman, presumably acting under orders from some superior officer, the steamer at the time being engaged in performing a freight-voyage at sea and the dumping of the ashes accumulated at her furnaces being a necessary incident to her navigation, under such circumstances the statute takes effect and renders the steamer liable as having herself violated the law. *The Bombay*, (1891) 46 Fed. Rep. 665.

The fact, however, that an employee on board of a steamship threw overboard a single scuttle of ashes at a prohibited place will not render the vessel liable, such act being a mere technical violation, which, while rendering the employee liable, will not affect the vessel, as a vessel can only be used or employed with the consent of the person who has the legal right to use and employ. *The Anjer Head*, (1890) 46 Fed. Rep. 664.

SEC. 2. [*Liability of officers of vessel towing scow, etc., loaded with prohibited matter.*] That any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of the harbor of New York, or in its adjacent, or tributary waters, or in those of Long Island Sound, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor hereinafter mentioned, shall be deemed guilty of a violation of this act, and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section one of this act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. [*25 Stat. L. 209.*]

SEC. 3. [*Permit to transport matter to dumping ground—penalty for failure to obtain.*] That in all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one thousand nor less than five hundred dollars, and in addition thereto the master of any tug or towboat so offending shall have his license revoked, or suspend for a term to be fixed by the judge before whom tried and convicted. [*28 Stat. L. 360.*]

[*Penalty for discharging at other places — persons liable.*] And any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and master, or person acting in the capacity of master, of any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor as provided in section one of the said Act of June twenty-ninth, eighteen hundred and eighty-eight; and the owner and master, or person acting in the capacity of master, of any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of this Act or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever, shall operate to release the owners and masters and employees of scows and towboats from the penalties hereinbefore mentioned. [28 Stat. L. 361.]

[*Boats to have name, etc., painted.*] Every scow or boat engaged in the transportation of dredgings, earth, sand, mud, cellar dirt, garbage, or other offensive material of any description shall have its name or number and owner's name painted in letters and numbers at least fourteen inches long on both sides of the scow or boat; these names and numbers shall be kept distinctly legible at all times, and no scow or boat not so marked shall be used to transport or dump any such material. [28 Stat. L. 361.]

[*Inspectors — powers and duties — arrest and prosecution of offenders.*] The supervisor of the harbor of New York, designated as provided in section five of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, is authorized and directed to appoint inspectors and deputy inspectors, and, for the purpose of enforcing the provisions of this Act and of the Act aforesaid, and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority:

First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this section and by the Act of June twenty-ninth, eighteen hundred and eighty-eight, aforesaid, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit as required in this section of this Act, and to seize and hold said boats until they

are discharged by action of the commissioner, judge, or court of the United States before whom the offending persons are brought.

Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds.

Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of this Act and of the Act aforesaid.

Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into the tidal waters of the harbor in violation of section one of the aforesaid Act of June twenty-ninth, eighteen hundred and eighty-eight. [28 Stat. L. 361.]

[*Bribery of inspectors, etc.*] Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward or makes any offer of the same to any inspector, deputy inspector, or other employee of the office of the supervisor of the harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of this section or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, shall, on conviction thereof, be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned not less than six months nor more than one year. [28 Stat. L. 362.]

[*Return of permits — indorsement — penalty.*] Every permit issued in accordance with the provisions of this section of this Act which may not be taken up by an inspector or deputy inspector shall be returned within forty-eight hours after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and if so the time and place of dumping. Any person violating the provisions of this section shall be liable to a fine of not more than five hundred dollars nor less than one hundred dollars. [28 Stat. L. 362.]

This section was amended to read as above by the Act of Aug. 18, 1894, ch. 299, 28 Stat. L. 360. The section originally read as follows:

"SEC. 3. That in all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, it shall be the duty of the owner or master, or person acting in such capacity, on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, to apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor within the meaning of this act; and the master and engineer, or person or persons acting in such capacity, on board of any tow-boat towing such scows or boats, shall be equally guilty of such offense with the master or person acting in the

capacity of master of the scow, and be liable to equal punishment." [25 Stat. L. 209.]

Constitutionality — criminal intent. — The statute is not beyond the constitutional power of Congress if it is to be construed as making a person who is innocent of criminal intent criminally liable for the act of another. The presence of a criminal intent is not an essential element of a statutory offense. *Jaycox v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 938.

Power of supervisor to select dumping ground. — The Act is tantamount to a legislative direction that such deposit shall not be made within spaces prescribed by the supervisor, and shall be made within spaces prescribed by him. Under it the supervisor may withdraw certain sections of water from the injurious effects of dumping. Such preclusion of persons from dumping within designated localities might be a sufficient protection; but the Act supplements the direction for indicating prohibited sections by provid-

ing that the supervisor shall assign to each person desiring to dump in the harbor a place where the same may be done. It confides to him a power of selecting the spots where at various times, during different years or months, or days or hours, refuse might be deposited with the least injury to the use of the water for navigation and commerce and for the best protection of adjacent shores. *U. S. v. Romard*, (1898) 89 Fed. Rep. 156.

Including certain places excludes others. — The statute is so framed that the inclusion of certain places for dumping is the exclusion of other places for such purposes. *U. S. v. Romard*, (1898) 89 Fed. Rep. 156.

Necessary statements in permit and indictment. — It was not necessary to state in the permit limits within which the deposit could not be made, nor to charge in the indictment that the deposit was made within limits prohibited by the supervisor. *U. S. v. Romard*, (1898) 89 Fed. Rep. 156.

Diligence required. — As experience has shown the necessity of a rigid observance of prohibitory measures against the obstruction of the harbor, there was occasion for an Act which would cast rigid responsibilities upon persons who permitted a violation of the statute, but the Act in question did not mean that there was no excuse in any event for a deviation from the specified dumping ground. The Act required the captain of the tug, who was in the general charge of both tug and tow, to exercise the highest diligence to prevent a deviation from the dumping place specified in the permit; and, therefore, he could not set up in discharge of this obligation, defects in machinery, because the machinery could have been tested before the voyage commenced; or avoidable accidents; or mere unfavorable weather, because the expedition need not have been entered upon in such weather; or lack of seamanship. The same duty of diligence was imposed upon the captain of the scow to see that the load was discharged at the proper time and place. *Randall v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 935.

Offense of scowmen is offense of master of tug. — It is the apparent meaning of the statute that the unlawful act of the scowmen shall be regarded as the act of the master of the towboat, if committed upon the dump-

ing voyage, and consequently as one and the same offense. *Jaycox v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 938.

The statute does not make any person criminally liable for an act committed without his participation. The participation of the master of the towboat and the masters of the scows is found in the circumstance that they are assisting in the general undertaking in the course of which the forbidden act is done. Neither one of them is under any obligation to engage in such an enterprise, and if he chooses to engage in it he does so at the peril of incurring criminal responsibility if it is not pursued lawfully; and no principle of natural justice is violated by a statute which makes him responsible for the conduct of his coadjutor. *Jaycox v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 938.

Responsibility of masters for unavoidable accidents. — "The concluding clause of section 3 * * * by implication absolves the masters of towboats and scows from criminal responsibility for violations of the statute caused by unavoidable accidents, but not from those caused by negligence or ignorance of the employees of the scows." *Jaycox v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 938.

Master of tug asleep. — The fact that the master of the towboat was asleep, and therefore not actively managing her navigation at the time when the forbidden act was committed, cannot relieve him, in view of the explicit language of the statute. *Jaycox v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 938.

Deviation by perils of sea. — This Act should not be construed to require a conviction even though perils of the sea compel a deviation from the dumping ground. Such a construction would violate the principles of natural justice. *Randall v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 935.

Necessary deviation a question for jury. — The question whether under all the circumstances of the case the weather was so unfavorable that life and property would have been jeopardized in attempting to manoeuvre out in the water is to be determined by a jury where there was a deviation and the cargo was not all dumped at the specified place, owing to the stress of weather. *Randall v. U. S.*, (C. C. A. 1901) 107 Fed. Rep. 935.

SEC. 4. [*Disposal of dredged matter — legal proceedings for violation of act.*] That all mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in the harbor of New York, or the waters adjacent or tributary thereto, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in the third section of this act prescribed, and not otherwise.

Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal,

or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense against this act, and shall be punished by a fine equal to the sum of five dollars for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section.

Any boat or vessel used or employed in violating any provision of this act, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against, summarily by way of libel in any district court of the United States, having jurisdiction thereof. [25 Stat. L. 210.]

Relation to other sections of Act.—The last sentence of this section, although forming a part of this section, is equally applicable to all sections of the Act. The previous parts of the section, however, are confined exclusively to violations of this section. The Emperor, (1892) 49 Fed. Rep. 751.

Proof of connection with illegal act necessary.—The last clause of the second paragraph of this section is a qualification and limitation upon the "responsibility" enacted by the previous clause, in so far at least as to prevent any conviction of an offense or any punishment by fine of any person who is not in some way connected by proof with the performance of the illegal act. The Emperor, (1892) 49 Fed. Rep. 751.

"Used or employed."—The emphatic words in the last clause of this section are "used" and "employed." Practically they are synonymous and they mean "to make use of," "put to a purpose." The clause, therefore, renders every boat or vessel put to the purpose of violating the provisions of this statute liable to the penalty. The Anjer Head, (1890) 46 Fed. Rep. 664.

Scowmen acting against orders—liability of tug.—Where scows loaded with mud were being towed to the dumping ground by a tug,

and, while the tug was on the way to the dumping ground in the usual course, but before arriving there, and while within the prohibited limits, the scows were dumped by the men on the scows of their own volition and without the knowledge of those in charge of the tug, and without any signal from the tug and contrary to the captain's previous orders, the scowmen were in no way connected with the tug and neither the captain nor any person on board the tug was the "person offending" under this Act, nor was the tug "used or employed" in the illegal act of the scowmen. The Emperor, (1892) 49 Fed. Rep. 751.

Limited to New York harbor.—This section is limited to materials placed on any boat "for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit," and has no application to refuse taken and dumped at Newburgh, because the waters of the Hudson river at Newburgh are not "waters of the harbor of New York." The subsequent words, "such mud, dirt," etc., refer to mud, dirt, etc., loaded for the purpose of being towed upon the waters of New York harbor. U. S. v. The Sadie, (1890) 41 Fed. Rep. 823.

SEC. 5. [Supervisor of harbor.] That a line officer of the Navy shall be designated by the President of the United States as supervisor of the harbor, to act under the direction of the Secretary of War in enforcing the provisions of this act, and in detecting offenders against the same. This officer shall receive the sea-pay of his grade, and shall have personal charge and supervision under the Secretary of War, and shall direct the patrol boats and other means to detect and bring to punishment offenders against the provisions of this act. [25 Stat. L. 210.]

SEC. 6. [Makes appropriation.]

SEC. 2. [Deflections of currents by bridge piers or abutments—remedies.] That whenever complaint shall be made to the Secretary of War that by reason of the placing in any navigable waters of the United States of any bridge pier or abutment, the current of such waters has been so deflected from its natural course as to cause by producing caving of banks or otherwise serious damage or danger to property, it shall be his duty to make inquiry, and if

it shall be ascertained that the complaint is well founded, he shall cause the owners or persons operating such bridge to repair such damage or prevent such danger to property by such means as he shall indicate and within such time as he may name, and in default thereof the owners or persons operating such bridge shall be liable in any court of competent jurisdiction to the persons injured in a sum double the amount of said injury: *Provided, however, That nothing herein contained shall be construed so as to affect any rights of action which may exist at the time of the passage of this act.* [25 Stat. L. 423.]

This and section 7 following are from the River and Harbor Appropriation Act of Aug. 11, 1888, ch. 860.

SEC. 7. [*Permanent appropriation for snag boats on Upper Mississippi river — reports.*] That for the purpose of securing the uninterrupted work of operating snag boats on the Upper Mississippi River, and of removing snags, wrecks, and other obstructions in the Mississippi River, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the amounts appropriated in this act for such purposes: *Provided, however, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers.* [25 Stat. L. 424.]

See note to section 2, *supra*.

SEC. 13. [*Permanent appropriation for snag boats on Ohio river — reports.*] That for the purpose of securing the uninterrupted work of operating snag-boats on the Ohio River and removing snags, wrecks, and other obstructions in said river, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of twenty-five thousand dollars: *Provided, however, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers.* [26 Stat. L. 455.]

This is from the River and Harbor Appropriation Act of Sept. 19, 1890, ch. 907.

SEC. 2. [*Fishing or dredging for shell fish, or interference with navigation in New York harbor forbidden — penalty — proceedings.*] It shall be unlawful for any person or persons to engage in fishing or dredging for shell fish in any of the channels leading to and from the harbor of New York, or to interfere in any way with the safe navigation of those channels by ocean steamships and ships of deep draft. Any person or persons violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine or imprisonment, or both, such fine to be not more than two hundred and fifty dollars nor less than fifty dollars, and the imprisonment to be not more than six months nor less than thirty days, either or both united, as the judge before whom conviction is obtained shall decide. It shall be the duty of the United States Supervisor of the harbor to enforce this Act, and the deputy inspectors of the said supervisor shall have authority to arrest and take into custody, with or without process, any person

or persons who may commit any of the acts or offenses prohibited by this Act: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspector or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. [28 Stat. L. 360.]

This is from the River and Harbor Appropriation Act of Aug. 18, 1894, ch. 299.

An Act To establish certain harbor regulations for the District of Columbia.

[Act of May 19, 1896, ch. 208, 29 Stat. L. 126.]

[SEC. 1.] [*Deposit of refuse, etc., in Potomac River, etc., in District of Columbia, forbidden.*] That it shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the Commissioners of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation. [29 Stat. L. 126.]

SEC. 2. [*Deposit of offal forbidden.*] That it shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, ice, snow, filth, or trash of any kind whatsoever. [29 Stat. L. 127.]

SEC. 3. [*Penalty for violation of Act.*] That any person or persons violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or by both such punishments, in the discretion of the court. [29 Stat. L. 127.]

SEC. 4. [*Government improvements not affected.*] That nothing in this Act contained shall be construed to interfere with the work of improvement in or along the said river and harbor, under the supervision of the United States Government. [29 Stat. L. 127.]

SEC. 5. [*Repeal.*] That all acts or parts of acts inconsistent herewith are hereby repealed. [29 Stat. L. 127.]

SEC. 8. [*Report of Government wharves, etc., occupied by private persons, etc.*] That the Secretary of War is directed to cause to be prepared and reported to Congress a list of all piers, wharves, and other structures or property per-

taining to river and harbor works belonging to the Government of the United States now occupied by private corporations or persons, together with the terms upon which such piers, wharves, or other property are occupied, and the date of the agreement or permission granting the privilege to occupy the same, and shall make such recommendations as he may deem desirable in connection therewith. [30 Stat. L. 1150.]

This and sections 9-20 following are from the River and Harbor Appropriation Act of March 3, 1899, ch. 425.

SEC. 9. [Authority for construction of bridges, dikes, dams, etc. — plans.] That it shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: *Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War. [30 Stat. L. 1151.]

See note to section 8, *supra*.

This and the following sections of this Act superseded the provisions of the River and Harbor Appropriation Act of Sept. 19, 1890, ch. 907, which read as follows:

"SEC. 4. That section nine of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, be amended and re-enacted so as to read as follows:

That whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now constructed, or which may hereafter be constructed over any of the navigable water-ways of the United States is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw-opening or the draw-span of such bridge by rafts, steam boats, or other water-craft, it shall be the duty of the said Secretary, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal

proceedings mentioned in the succeeding section may be taken." [26 Stat. L. 453.]

"SEC. 5. That section ten of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, be amended and re-enacted so as to read as follows:

That if the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect as hereinbefore required from the Secretary of War and within the time prescribed by him, willfully fail or refuse to remove the same, or to comply with the lawful order of the Secretary of War in the premises such persons, corporation or association shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed." [26 Stat. L. 453.]

"SEC. 6. That it shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, furnace, manufacturing establishments, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, or other

waste of any kind, into any port, road, roadstead, harbor, haven, navigable river, or navigable waters of the United States which shall tend to impede or obstruct navigation, or to deposit or place or cause, suffer, or procure to be deposited or placed, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, or other waste in any place or situation on the bank of any navigable waters where the same shall be liable to be washed into such navigable waters, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend or be construed to extend to the casting out, unloading, or throwing out of any ship or vessel, lighter, barge, boat, or other craft, any stones, rocks, bricks, lime, or other materials used, or to be used, in or toward the building, repairing, or keeping in repair any quay, pier, wharf, weir, bridge, building, or other work lawfully erected or to be erected on the banks or sides of any port, harbor, haven, channel, or navigable river, or to the casting out, unloading, or depositing of any material excavated for the improvement of navigable waters, into such places and in such manner as may be deemed by the United States officer supervising said improvement most judicious and practicable and for the best interests of such improvements, or to prevent the depositing of any substance above mentioned under a permit from the Secretary of War, which he is hereby authorized to grant, in any place designated by him where navigation will not be obstructed thereby." [26 Stat. L. 453.]

"SEC. 7. That it shall not be lawful to build any wharf, pier, dolphin, boom, dam, weir, breakwater, bulkhead, jetty or structure of any kind outside established harbor lines, or in any navigable waters of the United States where no harbor lines are or may be established, without the permission of the Secretary of War, in any port, roadstead, haven, harbor, navigable river, or other waters of the United States, in such manner as shall obstruct or impair navigation, commerce, or anchorage of said waters; and it shall not be lawful hereafter to commence the construction of any bridge, bridge draw, bridge piers and abutments, causeway, or other works over or in any port, road, roadstead, haven, harbor, navigable river or navigable waters of the United States, under any act of the legislative assembly of any State, until the location and plan of such bridge or other works have been submitted to and approved by the Secretary of War, or to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity of any port, roadstead, haven, harbor, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless approved and authorized by the Secretary of War: *Provided*: That this section shall not apply to any bridge, bridge draw, bridge piers and abutments the construction of which has been heretofore duly authorized by law, or be so construed as to authorize the

construction of any bridge, draw bridge, bridge piers and abutments or other works under an act of the legislature of any State, over or in any stream, port, roadstead, haven or harbor or other navigable water not wholly within the limits of such State." [27 Stat. L. 88.]

This section was amended to read as above by the Act of July 13, 1892, ch. 158, sec. 3.

"SEC. 8. That all wrecks of vessels and other obstructions to the navigation of any port, roadstead, harbor, or navigable river, or other navigable waters of the United States, which may have been permitted by the owners thereof or the parties by whom they were caused to remain to the injury of commerce and navigation for a longer period than two months, shall be subject to be broken up and removed by the Secretary of War, without liability for any damage to the owners of the same." [26 Stat. L. 454.]

"SEC. 9. That it shall not be lawful for any person or persons to take possession of or make use for any exclusive purpose, or build upon, alter, deface, destroy, injure, obstruct, or in any other manner impair the usefulness of any sea-wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States in whole or in part, for the preservation and improvement of any of its navigable waters, or to prevent floods, or as boundary marks, tide-gauges, surveying-stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works." [26 Stat. L. 454.]

"SEC. 10. That the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters, in respect of which the United States has jurisdiction, is hereby prohibited. The continuance of any such obstruction, except bridges, piers, docks and wharves, and similar structures erected for business purposes, whether heretofore or hereafter created, shall constitute an offense and each week's continuance of any such obstruction shall be deemed a separate offense. Every person and every corporation which shall be guilty of creating or continuing any such unlawful obstruction in this act mentioned, or who shall violate the provisions of the last four preceding sections of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court, the creating or continuing of any unlawful obstruction in this act mentioned may be prevented and such obstruction may be caused to be removed by the injunction of any circuit court exercising jurisdiction in any district in which such obstruction may be threatened or may exist; and proper proceedings in equity to this end may be instituted under the direction of the Attorney-General of the United States." [26 Stat. L. 454.]

"SEC. 12. That section twelve of the river and harbor act of August eleventh, eighteen

hundred and eighty-eight, be amended and re-enacted so as to read as follows:

Where it is made manifest to the Secretary of War that the establishment of harbor-lines is essential to the preservation and protection of harbors, he may, and is hereby authorized, to cause such lines to be established, beyond which no piers, wharves, bulkheads or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him; and any person who shall willfully violate the provisions of this section, or any rule or regulation made by the Secretary of War in pursuance of this section, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year, at the discretion of the court for each offense." [26 Stat. L. 455.]

The section in the text and the following sections also superseded the provisions of the River and Harbor Appropriation Act of Aug. 18, 1894, ch. 299, as follows:

"SEC. 6. That it shall not be lawful to place, discharge, or deposit, by any process or in any manner, ballast, refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the waters of any harbor or river of the United States, for the improvement of which money has been appropriated by Congress, elsewhere than within the limits defined and permitted by the Secretary of War; neither shall it be lawful for any person or persons to move, destroy, or injure in any manner whatever any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, in whole or in part, for the preservation and improvement of any of its navigable waters, or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks; any and every such act is made a misdemeanor, and every person knowingly engaged in or who shall knowingly aid, abet, authorize, or instigate a violation of this section shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than twenty-five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor." [28 Stat. L. 363.]

"SEC. 7. That any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who may willfully injure or destroy any work of the United States contemplated in section six of this Act, or who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit or discharge in any harbor contemplated

in section six of this Act, elsewhere than within the limits defined and permitted by the Secretary of War, shall be deemed guilty of a violation of this Act and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section six of this Act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted." [28 Stat. L. 363.]

"SEC. 8. Any boat, vessel, scow or other craft used or employed in violating any of the provisions of sections six and seven of this Act shall be liable to the pecuniary penalties imposed thereby, and in addition thereto to the amount of the damages done by said boat, vessel, scow, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor in which the damage occurred, and said boat, vessel, scow, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof." [28 Stat. L. 363.]

"SEC. 9. That whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tide water displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tide-water channels between high and low water mark, to such an extent as to create a basin for as much tide water as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him: *Provided*, That all such dredging or other improvement shall be carried on under the direction of the Secretary of War, and shall in no wise injure any existing channels." [28 Stat. L. 364.]

State and federal control.—Where the subjects on which the power may be exercised are local in their nature or operation, or constitute mere aids to commerce, the authority of the state may be exerted for their regulation and management until Congress interferes and supersedes it. Bridges over navigable streams which are entirely within the limits of a state are of this class. The local authority can better appreciate their necessity, and can better direct the manner in which they should be used and regulated, than a government at a distance. It is, therefore, a matter of good sense and practical wisdom to leave their control and management with the states, Congress having the power at all times to interfere and supersede their authority whenever they act arbitrarily and to the injury of commerce. *Escanaba, etc., Transp. Co. v. Chicago*, (1882) 107 U. S. 678; *Willamette Iron Bridge Co. v. Hatch*, (1888) 125 U. S. 1; *Sands v. Manistee River Imp. Co.*, (1887) 123

U. S. 293; *Huse v. Glover*, (1886) 119 U. S. 543; *Hamilton v. Vicksburg, etc.*, R. Co., (1886) 119 U. S. 281; *Cardwell v. American Bridge Co.*, (1885) 113 U. S. 205; *Miller v. New York*, (1883) 109 U. S. 385; *Mobile County v. Kimball*, (1880) 102 U. S. 691; *Northern Transp. Co. v. Chicago*, (1878) 99 U. S. 643; *Pound v. Turck*, (1877) 95 U. S. 462; *Gilman v. Philadelphia*, (1865) 3 Wall. (U. S.) 721; *Mississippi, etc.*, R. Co. v. *Ward*, (1862) 2 Black (U. S.) 494; *Palmer v. Cuyahoga County*, (1843) 3 McLean (U. S.) 226; *Willson v. Black Bird Creek Marsh Co.*, (1829) 2 Pet. (U. S.) 245; *Columbus Ins. Co. v. Curtienius*, (1854) 6 McLean (U. S.) 209, 6 Fed. Cas. No. 3,045; (1891) 20 Op. Atty.-Gen. 101.

Navigable waters entirely within the limits of a state stand upon the same footing and are subject to the same controlling authority of Congress as those extending through or reaching beyond the state. The right of the state, in the absence of congressional regulation to the contrary, to authorize the erection of bridges over such portion of navigable waters as may be embraced within its limits does not depend upon the length of such waters, nor is the state's authority restricted or affected by the fact that some portion of the stream may extend beyond its territorial jurisdiction. *Rhea v. Newport, etc.*, R. Co., (1892) 50 Fed. Rep. 16.

The following cases construed the superseded Act of Sept. 19, 1890, section 4.

The power of Congress over navigable streams is supreme and grows out of the power to regulate commerce. (1896) 21 Op. Atty.-Gen. 430.

Under the power conferred upon Congress by the Constitution to regulate commerce, the United States has the right to control all structures and works which interfere in any manner with the navigable capacity of the navigable waters of the United States which either by themselves, or in connection with other waters, form channels for interstate commerce. (1899) 22 Op. Atty.-Gen. 332.

The right of the state to erect or authorize bridges over the river which should not interfere with its navigation is conceded, and such bridges are lawful structures. But they are built subject to the power of Congress at any time to act upon the matter of the navigation of the river and to define what structures should be regarded as interfering with that navigation. *U. S. v. Rider*, (1892) 50 Fed. Rep. 406.

Effect of state authorization.—Any obstruction to a waterway, in the face of a mandate of Congress that the river shall be used as one of its interstate waterways, is open to removal by the proper authorities of the United States government. The fact that the state may have authorized the structure is of no avail from the moment that the government of the United States determines to employ the river as such an interstate highway. *U. S. v. Moline*, (1897) 82 Fed. Rep. 592.

Bridge erected prior to federal control.—Where a bridge was erected by authority of a state before Congress assumed actual juris-

diction over the river for the purposes of navigation, and it is declared to be an obstruction to navigation, such obstruction may be removed without compensation from the United States, and such removal cannot be regarded as a "taking of private property," within the meaning of the Constitution. (1896) 21 Op. Atty.-Gen. 430.

Constitutionality.—There is in the Act no delegation of judicial power to the secretary that is not open to review in the courts. Therefore, the Act, so far as it is applicable to the case in hand, is constitutional and valid. *U. S. v. Moline*, (1897) 82 Fed. Rep. 592.

It is not an unconstitutional delegation of the legislative function for Congress to intrust to the secretary of war the power to declare what is an unreasonable obstruction to navigation. (1896) 21 Op. Atty.-Gen. 430.

Congress itself is not required to consider each case of alleged obstruction to navigation and determine the facts and declare that an obstruction exists, but it may generally define the offense and leave the facts to be determined by a court or special tribunal. (1896) 21 Op. Atty.-Gen. 430.

In *U. S. v. Keokuk, etc.*, Bridge Co., (1891) 45 Fed. Rep. 178, it was held that Congress cannot without abdicating its paramount and conclusive authority in the regulation of the commercial highways of the country confer upon the secretary of war the right to declare that bridges lawfully erected are obstructions to free navigation and must be remodeled or removed.

In *U. S. v. Rider*, (1892) 50 Fed. Rep. 406, it was held that sections 4 and 5 of the River and Harbor Act of Sept. 19, 1890, are unconstitutional.

Change of authorized bridge.—In *U. S. v. Keokuk, etc.*, Bridge Co., (1891) 45 Fed. Rep. 178, it was held that if a bridge is constructed in accordance with the provision of an Act of Congress authorizing its erection, it is, when thus constructed, a legal structure, and its status in this particular cannot be changed by judicial action, or by any power short of that which legalized it in the beginning.

Nature of statute.—The statute is revisory and defensive in its nature; it clears the way for interstate and foreign commerce, but does not assume the police powers or local control. (1891) 20 Op. Atty.-Gen. 101.

Strict construction.—It is one of those statutes which, being against common right, is to be strictly construed, and which is to be interpreted and applied in accordance with the constitutional rights of individuals. *Willink v. U. S.*, (1903) 38 Ct. Cl. 693.

It is the duty of the secretary of war to ascertain whether the bridge across the river is an unreasonable obstruction to the free navigation of said river, and if he comes to the conclusion that it is such an obstruction it is his duty to proceed as required by that statute. (1891) 20 Op. Atty.-Gen. 101.

Questions to be considered by secretary.—In deciding whether any given bridge is an "unreasonable" obstruction, the secretary must necessarily take into account not only

the interests of navigation, but also those of intersecting locomotion and transportation. (1891) 20 Op. Atty.-Gen. 101.

The rights of intersecting lines of freight and of travel, the needs and the convenience of residents, and the business movements of all who come and all who go, are elements which help to constitute the reasonableness of an interfering structure built for their use, but to some extent obstructive to the waterway. (1891) 20 Op. Atty.-Gen. 101.

Replacing bridge.—If the company itself voluntarily prostrates its bridge with the intention of constructing another in its place, the secretary of war has the right to prescribe conditions as to height, length of span, etc. (1899) 22 Op. Atty.-Gen. 343.

What obstructions included.—The "obstructions" referred to in sections 9 and 10 of the Act of Aug. 11, 1888, ch. 860, are such as appertain to the structure of the bridge and its plan, in view of its location. They are such as, under the language of the sections, can be remedied by "alterations." (1899) 19 Op. Atty.-Gen. 395.

Illegal obstruction necessary.—The bridge owner cannot be made liable to a fine or for damages simply because the bridge may be in fact an obstruction to the navigation of the river, but only in case the obstruction is illegal. *U. S. v. Keokuk, etc., Bridge Co.,* (1891) 45 Fed. Rep. 178.

Obstructions below low-water mark.—The pains and penalties prescribed for erecting obstructions must be restricted to obstructions below low-water mark, to obstructions erected, not as an owner of private property on his land, but obstructions erected on public waters on land which if it belongs to any one belongs to the United States. *Willink v. U. S.,* (1903) 38 Ct. Cl. 693.

Failure to open draw promptly.—Obstructions caused by failure to promptly open the draw of the bridge for passing vessels are not within those sections. (1899) 19 Op. Atty.-Gen. 395.

Nature of obstruction and changes required must be shown.—It certainly could not be permitted to the secretary, without any hearing afforded to the company, to declare that the bridge was an obstruction, and then to notify the company that the bridge must be altered or remodeled, without either pointing out the character of the obstruction or the changes deemed necessary to be made in order to meet the views of the secretary. *U. S. v. Keokuk, etc., Bridge Co.,* (1891) 45 Fed. Rep. 178.

Notice of changes required and time therefor.—Section 4 of this Act provides that whenever the secretary of war determines that a bridge over a navigable waterway of the United States is an unreasonable obstruction to the free navigation of such waterway, it shall be his duty, after giving the parties an opportunity to be heard, to direct that the bridge be so altered as to render navigation reasonably unobstructive, and in giving such notice he shall specify the changes required and the time within which to be made. (1896) 21 Op. Atty.-Gen. 430.

Notice served on company subsequently insolvent.—Where a notice was served on a railroad company that a certain bridge over a navigable river was an obstruction and its alteration was required, and thereafter, but before the time fixed in the notice as a limit of the time during which the alteration must be made, the company was dispossessed of its property, not voluntarily, but against its will, by decree of a court of competent jurisdiction, the company cannot be held liable for noncompliance with the order of the secretary of war. And where the receivers of such company had received no notice in their capacity as receivers they cannot be held liable, although they had notice prior to their appointment and acceptance of the office that the railway company had been notified to make such alteration. *U. S. v. St. Louis, etc., R. Co.,* (1890) 43 Fed. Rep. 415.

Reasonable notice a question for court.—Where the facts are clear, what is reasonable notice or reasonable time is always a question exclusively for the court. *U. S. v. Rider,* (1892) 50 Fed. Rep. 406.

County commissioners without funds to make change.—A notice by the secretary to the commissioners of a certain county to institute a draw in a certain bridge over a navigable river is unreasonable and does not give due time where the commissioners had no funds applicable to such a purpose, nor could they obtain any through the legislature, and where their only method of raising such funds was by submitting the question to the people at a general election, which under the laws of the state could not be done within the time required in the notice of the secretary. *U. S. v. Rider,* (1892) 50 Fed. Rep. 406.

Compensation for removal.—Structures which are unauthorized by law may be summarily removed and without compensation. Those which are authorized by law can only be removed by making just compensation, unless the authorization by the federal government was accompanied with a reservation of a right to change, modify, or remove. (1899) 22 Op. Atty.-Gen. 343.

The right of Congress to remove the obstruction does not of itself exempt the government of the United States from the duty of making just compensation for such property rights as are taken. *U. S. v. Moline,* (1897) 82 Fed. Rep. 592.

The following cases construed the superseded Act of Sept. 19, 1890, section 5:

State not included.—The words "persons, corporation, or association" in the statute do not include a sovereign state, and it is not the duty of the department of war to serve the notice provided for in section 4 on a state with regard to a bridge owned by the state. (1893) 20 Op. Atty.-Gen. 606.

Jurisdiction of District Court.—This Act gives the District Court jurisdiction of a criminal action against the owner of a bridge to recover a fine of five thousand dollars at the suit of the district attorney, when the secretary of war shall find that such bridge is an unreasonable obstruction to the free navi-

gation of the water which it crosses, and when said owner shall fail or neglect to obey the order of the secretary thereabout. *Oregon City Transp. Co. v. Columbia St. Bridge Co.*, (1892) 53 Fed. Rep. 549.

The following cases construed the superseded Act of Sept. 19, 1890, section 6.

Prohibition of deposit, where.—The depositing and placing of ballast, stone, and other articles mentioned in any place or situation on the bank of a navigable river is not absolutely prohibited; the prohibition applies only to such places where the same shall be liable to be washed into such navigable river by ordinary or high tides, or by storms or floods or otherwise, and not even then unless navigation shall or may be impeded or obstructed. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Floating logs or rafts.—This Act is directed against the casting into or constructing upon the beds of navigable streams anything which may create obstructions more or less permanent in character, diminishing the navigable capacity of the streams. It is not directed against the floating of logs or rafts thereon which may obstruct the surface of the streams, but which necessarily are temporary in their effect. *U. S. v. Marthinson*, (1893) 58 Fed. Rep. 765.

Only one offense should be charged.—The language of a statute creates or describes several separate offenses, and in charging one of them, only the words applicable to the one intended to be set forth should be used in the count charging the violation, and all of the language used in describing all the offenses should not be employed. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Allegation of character of deposit.—The defendants should be advised clearly as to the character of the article or waste matter they so threw into the river, and as to the place where it was done. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Allegation of place.—“Place is of the utmost importance, and the allegation as to the location should be clear and unequivocal.”

“The defendants should not be liable to be surprised as to the place, but should be fully advised and an opportunity given them to show by witnesses who have examined the place designated that it is not such a situation where the articles enumerated were liable to be washed into the river and navigation impeded thereby.” *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

The following cases construed the superseded Act of Sept. 19, 1890, section 7.

The evident intention of Congress was to take exclusive charge of such matters in the future for the United States, and to place them under the charge of the secretary of war, leaving it to his discretion to authorize or prohibit the building of the structure and the creation of the impairment of navigation; thus rendering it unnecessary to apply to Congress for permission or special legislation in particular cases, as had frequently been done theretofore. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Exclusive control of United States.—The Act was intended to place the navigable waters of the United States under the exclusive control of the United States and thereafter prevent any interference with their navigability, whether by bridges, dams, or other obstructions, except by express permission of the United States granted through its agent, the secretary of war. (1898) 22 Op. Atty.-Gen. 52; (1894) 21 Op. Atty.-Gen. 41.

State authority.—Full power resides in the states as to the erection of bridges and other works in navigable streams wholly within their jurisdiction, in the absence of the exercise by Congress of authority to the contrary. *Lake Shore, etc., R. Co., v. Ohio*, (1897) 165 U. S. 365. See also *Shively v. Bowlby*, (1894) 152 U. S. 33; *Willamette Iron Bridge Co. v. Hatch*, (1888) 125 U. S. 1; *Cardwell v. American Bridge Co.*, (1885) 113 U. S. 205; *Withers v. Buckley*, (1857) 20 How. (U. S.) 84; *Willson v. Black Bird Creek Marsh Co.*, (1829) 2 Pet. (U. S.) 245; *Kansas City, etc., R. Co. v. Wiygul*, (1903) 82 Miss. 228; *Oregon City Transp. Co. v. Columbia St. Bridge Co.*, (1892) 53 Fed. Rep. 549.

Bridges built under state authority.—Even conceding *arguendo* that the words “navigable waters” as used in the Act were intended to apply to streams wholly within a state, its obvious purpose was not to deprive the states of authority to grant power to bridge such streams or to render lawful all bridges previously built without authority, but simply to create an additional and cumulative remedy to prevent such structures, although lawfully authorized, from interfering with commerce. *Lake Shore, etc., R. Co. v. Ohio*, (1897) 165 U. S. 365.

Navigable waters only.—This statute relates solely to navigable waters. *Egan v. Hart*, (1897) 165 U. S. 188.

The Mississippi river in Minnesota, both above and below the Falls of St. Anthony, is a navigable river not wholly within the limits of any particular state, and cannot be bridged without the permission of the United States, expressed through the approval of the plans by the secretary of war. (1898) 22 Op. Atty.-Gen. 52.

The expression “affirmatively authorized by law” does not refer to Acts of Congress alone, but also includes laws of state legislation. *Kansas City, etc., R. Co. v. Wiygul*, (1903) 82 Miss. 228.

Bridges over waters within state only.—The authority conferred upon the secretary of war by this section is limited to the cases of bridges authorized by the state law to be erected over waters the navigable portions of which lie wholly within the limits of the state. (1892) 20 Op. Atty.-Gen. 488. See also (1892) 20 Op. Atty.-Gen. 479.

Waters extending into two states.—No general law exists providing for or permitting bridges to be built over navigable waters which divide or extend into two or more states, nor does any general legislation confer the power of approval upon the secretary of war as to bridges over such waters. (1892) 20 Op. Atty.-Gen. 488.

The contemplated approval of the secretary must be confined to waters lying wholly within the limits of one state, and navigable waters extending beyond the limits of a state should not be bridged without explicit authority from Congress. (1892) 20 Op. Atty.-Gen. 488.

Bridge over boundary waters authorized by both states.—The secretary of war would not be prohibited from approving the plan and location of a bridge across boundary waters if acts of authorization were passed by the legislatures of the states interested. (1899) 22 Op. Atty.-Gen. 332.

Clause 2 of the proviso does not limit the authority of the secretary of war to grant permission for the construction of a work of this character to navigable waters which lie wholly within the limits of one state. (1899) 22 Op. Atty.-Gen. 332.

Extent of power granted.—The provision that it shall not be lawful to thereafter erect any bridge "in any navigable river or navigable waters of the United States, under any act of the legislative assembly of any state, until the location and plan of such bridge * * * have been submitted to and approved by the secretary of war," contemplated that the function of the secretary should extend only to the form of future structures. *Lake Shore, etc., R. Co. v. Ohio*, (1897) 165 U. S. 365.

A bridge authorized before this Act does not need the authority of the secretary of war for its erection. *Adams v. Ulmer*, (1897) 91 Me. 47.

Authority to determine place and time of building.—The mere delegation of power to direct a change in lawful structures so as to cause them not to interfere with commerce cannot be construed as conferring on the officer named the right to determine when and where a bridge may be built. *Lake Shore, etc., R. Co. v. Ohio*, (1897) 165 U. S. 365.

Authority to authorize building not included.—The mere delegation to the secretary of the right to determine whether a structure authorized by law has been so built as to impede commerce, and to direct, when reasonably necessary, its modification so as to remove such impediment, does not confer upon the officer power to give original authority to build bridges, nor does it presuppose that Congress conceived that it was lodging in the secretary power to that end. *Lake Shore, etc., R. Co. v. Ohio*, (1897) 165 U. S. 365.

The words "or other works" in this Act are not to be interpreted according to their natural and usual sense, but are restricted to things of the same kind as those just enumerated. (1899) 22 Op. Atty.-Gen. 332.

Permanent constructions intended.—The excavating and filling, altering and modifying of the course, location, and capacity of the channel, as described in this section, must have reference to such permanent construction as tends to obstruct navigation, the building of which must have the approval and authorization of the secretary of war. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Purchasers of right to erect bridge.—Where a state has granted authority to construct a bridge over a navigable river, and the location and plan have been approved by the secretary of war, the question whether the purchasers of such right are authorized to proceed is one which does not concern the government. (1896) 21 Op. Atty.-Gen. 293.

Rights of parties.—The action of a state with reference to the rights of parties among themselves concerning the construction of a bridge does not affect the interests of the United States so long as the directions concerning the location and plan of the bridge are respected. (1896) 21 Op. Atty.-Gen. 293.

Consent of owner of submerged land necessary for wharf.—This Act is a mere regulation for the benefit of commerce and navigation, and the license or permission of the secretary of war is only a finding and declaration of such officer that such proposed structure would not interfere with or be detrimental to navigation, and it is not equivalent to a positive declaration by authority of Congress that the licensee may build the wharf or other structure without first obtaining the consent of the owner of the submerged land on which it is his purpose to build. *Cobb v. Lincoln Park*, (1903) 202 Ill. 427.

Power of secretary of interior to authorize dams.—The secretary of the interior has no power under the Act of March 3, 1891, providing for the location and selection of reservoir sites on the public lands of the United States and rights of way for irrigating ditches and canals, to grant a right to construct dams across the Rio Grande for the purpose of checking the flow of water and distributing it for irrigation purposes. The control and supervision of the navigable waters of the United States is vested in the secretary of war. (1897) 21 Op. Atty.-Gen. 518.

Definite allegation of place required.—If the defendants are to be required to answer to the charge of excavating the banks of the river and filling the bed and channel of the same, the place or places where it is alleged they so excavated and filled should be given with more definiteness than "at the district of West Virginia." *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Definite allegation of place required.—It is not an offense under this section to build any of the structures without the permission of the secretary of war unless the structures so built are constructed so as to obstruct or impair navigation, commerce, and anchorage in the waters where they are located. Consequently the place where the structure is located should be given in an indictment with more definiteness than "in, along, upon, and across a certain river." *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

The following cases construed the superseded Act of Sept. 19, 1890, section 10.

Constitutionality.—The adoption of this section was an exercise of the constitutional right of Congress to regulate commerce be-

tween the states. *U. S. v. Bellingham Bay Boom Co.*, (C. C. A. 1897) 81 Fed. Rep. 658.

Direct statute necessary. — There must be a direct statute of the United States in order to bring within the scope of its laws, as administered by the courts of law and equity, obstructions and nuisances in navigable streams within the states. Such obstructions and nuisances are offenses against the laws of the state within which the navigable waters lie, and may be indicted or prohibited as such, but they are not offenses against the United States laws which do not exist, and none such exist except what are to be found on the statute book. *U. S. v. Bellingham Bay Boom Co.*, (C. C. A. 1897) 81 Fed. Rep. 658.

General effect. — Whatever may be said in reference to obstructions existing at the time of the passage of the Act under the authority of the state statutes it is obvious that Congress meant that thereafter no state should interfere with the navigability of a stream without the condition of national assent. It did not, of course, disturb any of the provisions of prior statutes in respect to the mere appropriation of water of non-navigable streams in disregard of the old common-law rule of continuous flow, and its only purpose, as is obvious, was to affirm that as to navigable waters nothing should be done to obstruct their navigability without the assent of the national government. It was an exercise by Congress of the power oftentimes declared by the court to belong to it, of national control over navigable streams. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 707.

The object was to take control of the navigable waters of the United States, so as to protect the interests of the government and prevent obstructions in the free navigation of said waters. It was intended to apply to all cases where the states had failed to pass any laws in regard thereto and to prohibit obstructions not authorized by law. But it was not intended by Congress to be retroactive in its results. *U. S. v. Bellingham Bay Boom Co.*, (C. C. A. 1897) 81 Fed. Rep. 658.

"Not affirmatively authorized by law." — The expression contained in this section in regard to obstructions "not affirmatively authorized by law," meant not only a law of Congress, but a law of the state in which the river was situated, which had been passed before Congress had itself legislated upon the subject. An obstruction created under the authority of a state statute under such circumstances was an obstruction "affirmatively authorized by law." When, therefore, the section continues and provides that "any such obstruction, * * * whether heretofore or hereafter created," shall constitute an offense, it referred to an obstruction as described in the first sentence of the section, namely an "obstruction not affirmatively authorized by law." If the obstruction were affirmatively authorized by a law of the state, it did not come within the condemnation of the section, and its continuance was, there-

fore, valid. *U. S. v. Bellingham Bay Boom Co.*, (1900) 176 U. S. 211.

Right of federal court to construe state law. By the passage of the river and harbor bill, containing the above-mentioned 10th section, Congress had acted upon the subject, and has provided for the removal of any obstruction to a navigable river with the exception named in the section. When the attorney-general, therefore, acts under the authority conferred by this statute, he has the right to call upon the court, upon proper proofs being made to enjoin the continuance of an obstruction not authorized by the statute, and the court has jurisdiction, and it is its duty, to decide the question whether the existing obstruction is or is not affirmatively authorized by law. In such inquiry the court is bound to decide whether the boom as existing is authorized by any law of the state, when such law is claimed to be a justification for its creation or continuance. That question is not for the state alone, but must necessarily be decided by the federal court in the course of exercising the jurisdiction conferred upon it by the federal statute. *U. S. v. Bellingham Bay Boom Co.*, (1900) 176 U. S. 211, *reversing* (C. C. A. 1897) 81 Fed. Rep. 658.

Not within limits of navigation. — It would be to improperly ignore the scope of this language to limit it to the acts done within the very limits of navigation of a navigable stream. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 707.

A dam constructed in a river above its navigable limits which interferes with or impairs the navigability of the lower portion of the river is such an obstruction as may be enjoined by the attorney-general under the provisions of this section. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 707.

What obstructions prohibited. — The language is general and must be given full scope. It is not a prohibition of any obstruction to the navigation, but any obstruction to the navigable capacity by anything, wherever done, or however done, within the limits of the jurisdiction of the United States, which tends to destroy the navigable capacity of one of the navigable waters of the United States, is within the terms of the prohibition. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 707.

Section 10 was intended to apply to all obstructions of a permanent character not affirmatively authorized by law, wilfully, wantonly, carelessly, or voluntarily created in the navigable waters over which the United States has jurisdiction, not covered by the specific provisions of the preceding sections in the same chapter. *U. S. v. Hall*, (C. C. A. 1894) 63 Fed. Rep. 472.

The obstructions contemplated by the 10th section — those that have not been affirmatively authorized by law, and are, therefore, prohibited — are such obstructions as are permanent in their nature, as are created for special purposes by the usual modes of construction. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Hulls of vessels sunk in harbors, not
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through perils at sea, but through voluntary act of owners or their authorized agents, are obstructions within the meaning of this section of the statute. *U. S. v. Hall*, (C. C. A. 1894) 63 Fed. Rep. 472.

Rafts, logs, etc., floating.—It was not the intention of Congress by this tenth section to prohibit the floating of rafts, logs, timber, boats, and vessels, loose and adrift, in and upon the navigable waters of the United States. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

Bulging embankment.—Where a railroad company by an embankment placed such an increased burden on its right of way along a river that it forced out a plastic stratum of clay into the river, causing it to bulge up in the channel, thereby causing a bar and a consequent obstruction to navigation, the prohibition contained in this section will govern such a case, and such act is clearly unlawful. *Northern Pac. R. Co. v. U. S.*, (C. C. A. 1900) 104 Fed. Rep. 691.

Obstructions authorized previous to Act.—Congress recognized that in the exercise of the legitimate powers of the state government, Acts had been passed allowing individuals and corporations to build and construct booms, wharves, piers, and other structures upon the rivers, and it was not the intention of Congress to interfere with such works as had been "affirmatively authorized by law," either by the legislature of the state or by Acts of Congress. *U. S. v. Bellingham Bay Boom Co.*, (C. C. A. 1897) 81 Fed. Rep. 658.

Injunction at suit of damaged party.—The United States courts will interfere by injunction to restrain the obstruction of navigation by a bridge at the suit of a party who had sustained a special damage. *Pennsylvania v. Wheeling, etc., Bridge Co.*, (1851) 13 How. (U. S.) 518.

Question of fact to be determined.—When such proceedings are instituted, it becomes a question of fact whether the act sought to be enjoined is one which fairly and directly tends to obstruct (that is, interfere with or diminish) the navigable capacity of a stream. It does not follow that the courts would be justified in sustaining any proceedings by the attorney-general to restrain any appropriation of the upper waters of a navigable stream. The question always is one of fact whether such appropriation substantially interferes with the navigable capacity within the limits where navigation is a recognized fact. *U. S. v. Rio Grande Dam, etc., Co.*, (1899) 174 U. S. 707.

Insufficient indictment.—A count charging the defendants with unlawfully creating an obstruction not affirmatively authorized by law, to the navigable capacity of the river, but giving not the slightest notice or descrip-

tion of the acts done by them, which they are called upon to defend, is bad. *U. S. v. Burns*, (1893) 54 Fed. Rep. 351.

The following cases construed the superseded Act of Sept. 19, 1890, section 12.

Discretion of secretary.—The establishment of a certain line as essential to the preservation and protection of a harbor rests in the discretion of the secretary of war alone, and his judgment in the matter must be final and conclusive until modified by him. (1894) 20 Op. Atty.-Gen. 740.

Authority of local government.—While section 12 of the Act of 1890 forbade the construction or extension of piers, wharves, bulkheads, or other works beyond the harbor lines established under the direction of the secretary of war in navigable waters of the United States, "except under such regulations as may be prescribed from time to time by him," it does not follow that Congress intended in such matters to disregard altogether the wishes of the local authorities. Its general legislation so far means nothing more than that the regulations established by the secretary in respect of waters the navigation and commerce upon which may be regulated by Congress, shall not be disregarded even by the states. Congress has not, however, indicated its purpose to ignore wholly the original power of the states to regulate the use of navigable waters entirely within their respective limits. *Montgomery v. Portland*, (1903) 190 U. S. 89.

The following cases construed the superseded Act of Aug. 18, 1894, section 6.

The discretion given to the secretary of war is very broad and no principles governing it are declared. There is no appeal from his action. These facts impose the obligation of a careful scrutiny of the considerations which should control his judgment. (1896) 21 Op. Atty.-Gen. 305.

It is the duty of the secretary of war to act upon a petition to have designated the portion of a river within which refuse matter may be discharged in accordance with the provisions of the Act of Aug. 18, 1894, ch. 299, sec. 6, although navigability of the river will not be affected. The secretary of war in deciding this question should be governed only by considerations affecting the present or future navigation of the river. (1896) 21 Op. Atty.-Gen. 305.

Obstruction by hydraulic mining.—Obstruction to navigation of certain rivers within the state of California, caused by hydraulic mining, is one calling for the interposition of the restraining arm of equity in an appropriate action on behalf of the United States, with a view to remedying the evil. (1886) 18 Op. Atty.-Gen. 404.

SEC. 10. [Obstruction of navigable waters forbidden — approval of plans for wharves, etc. — excavations and fillings.] That the creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin,

boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same. [30 Stat. L. 1151.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

Intent to supersede state authority.—“If it had intended by the Act of 1899 to assert the power to take under national control for every purpose and to the fullest possible extent the erection of structures in the navigable waters of the United States, that were wholly within the limits of the respective states, and to supersede entirely the authority which the states in the absence of any action by Congress have in such matters, such a radical departure from the previous policy of the government would have been manifested by clear and explicit language. In the absence of such language it should not be assumed that any such departure was intended.” *Cummings v. Chicago*, (1903) 188 U. S. 410.

State and federal assent both necessary.—This Act does not manifest the purpose of Congress to go to the extent of authorizing the erection of docks and like structures in navigable waters that are entirely within the territorial limits of the several states, under its power to regulate foreign and interstate commerce, and thereby to supersede the original authority of the state. The effect of this Act reasonably interpreted is to make the erection of a structure in a navigable river within the limits of a state dependent upon the concurrent or joint assent of both the national government and the state government. *Montgomery v. Portland*, (1903) 190 U. S. 89. See also *Cummings v. Chicago*, (1903) 188 U. S. 410.

The secretary of war acting under the authority conferred by Congress may assent to the erection by private parties of such a structure. Without such assent the structure cannot be erected by them. But under the existing legislation they must, before proceeding under such an authority, obtain also the assent of the state acting by its constituted agencies. *Cummings v. Chicago*, (1903) 188 U. S. 410.

The right of private persons to erect structures in a navigable water of the United States that is entirely within the limits of a state cannot be said to be complete and absolute without the concurrent or joint assent of both the general and state government. *Montgomery v. Portland*, (1903) 190 U. S. 89.

Porto Rican waters.—The coastal waters, harbors, and other navigable waters of the

island of Porto Rico are waters of the United States within the meaning and intent of this section, although the ratifications of the treaty whereby that island was ceded by Spain to the United States were not exchanged until after the passage of that Act. (1901) 23 Op. Atty.-Gen. 551.

Prior to the passage of the Porto Rican Act of April 12, 1900 (31 Stat. L. 77), the secretary of war had authority under this section to issue a license for the building and maintenance of a wharf in the harbor of San Juan, P. R., and the rules imposed by section 3 of the resolution of May 1, 1900 (31 Stat. L. 715), upon the grant of franchises by the executive council of that island, do not extend to an antecedent license granted by him. The power to revoke the license so granted is vested in the secretary of war, and so long as it is unrevoked the rebuilding of the wharf, under such license, is subject to his control and supervision and not to that of the executive council. (1901) 23 Op. Atty.-Gen. 551.

The concluding clause of this section seems to refer rather to alterations in the location or capacity of a port, short of the obstructions which are absolutely prohibited. (1901) 23 Op. Atty.-Gen. 551.

Right to make repairs.—Congress had no intention by this section, which is prospective purely, of taking away from a railroad company, the construction of whose bridge had been “affirmatively authorized by law” as provided by the Act of Sept. 19, 1890, the necessary power embraced in and carried by the grant to construct the bridge, of making necessary repairs, provided such repairs are made with due care and within reasonable time. *Kansas City, etc., R. Co. v. Wiygul*, (1903) 82 Miss. 228.

Evidence necessary.—Where the record does not contain evidence of a material character, and the absence of such evidence is due to the action of the trial court in not giving sufficient time to the government to prepare the case and make the proper inquiry as to whether certain acts in the construction of a dam and in appropriating the waters of a river would substantially diminish the navigability of that stream, a decree of a District Court will be reversed and the cause remanded with liberty to both parties to take further evidence. *U. S. v. Rio Grande Dam, etc., Co.*, (1902) 184 U. S. 416.

SEC. 11. [*Establishment of harbor lines — displacements by fillings, etc.*] That where it is made manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is hereby, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: *Provided*, That whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tide water displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tide-water channels between high and low water mark, to such an extent as to create a basin for as much tide water as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him. [30 Stat. L. 1151.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

The absolute power of Congress to regulate commerce, being without limit or extent, includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, navigable rivers, and lakes, in harbors, or on land, irrespective of whether a state has attempted to regulate the same matter or not. (1899) 22 Op. Atty-Gen. 501.

Whenever Congress in the exercise of its power to regulate commerce makes any rule or regulation in harbors or elsewhere, whether in establishing harbor lines or otherwise, such regulation necessarily supersedes any that a state may have made upon the same subject within its limits. (1899) 22 Op. Atty-Gen. 501.

Effect of state lines. — The power to regulate commerce includes the power to regulate harbor lines. It may be exercised without reference to state action, and in establishing such lines the general government may do so either by adopting in whole or in part lines established by the state, or by making other and different lines. (1899) 22 Op. Atty-Gen. 501.

Authority of secretary of war. — This section in express terms confers upon the secretary of war authority to establish harbor lines whenever and wherever they are authorized by that Act; and, under the authority thus conferred, he is authorized to establish harbor lines whenever the interests of commerce require them, to restrict the encroachment of wharves, piers, etc., upon the waters of harbors, and to protect commerce therein; and this, notwithstanding the objection sometimes urged that this and kindred legislation are attempts to confer legislative or judicial power upon heads of departments or executive officers. *Navigable Waters*, (1899) 22 Op. Atty-Gen. 501.

Right to continuance of established lines. — In view of the frequently changing conditions which require changes of harbor lines, it cannot be claimed that the establishment of such a line gives to any one a vested right in its permanent continuance. (1899) 22 Op. Atty-Gen. 501.

Re-establishment of lines. — The fact that harbor lines have once been established is no bar to the exercise of the same power as often as the needs of commerce require. (1899) 22 Op. Atty-Gen. 501.

SEC. 12. [*Penalty for violations of Act — removal of structures.*] That every person and every corporation that shall violate any of the provisions of sections nine, ten, and eleven of this Act, or any rule or regulation made by the Secretary of War in pursuance of the provisions of the said section eleven, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any circuit court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States. [30 Stat. L. 1151.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

This section was amended by the Act of Feb. 20, 1900, ch. 23, sec. 2, 31 Stat. L. 32, by striking out, after the words "in pursu-

ance of the provisions of the said section," the word "fourteen," appearing in the section as originally enacted, and inserting the word "eleven" as above given.

SEC. 13. [*Depositing refuse in or on banks of navigable waters forbidden — permits to deposit.*] That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further*, That the Secretary of War, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful. [30 Stat. L. 1152.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

Power of Congress.—Congress has power to regulate and improve the harbors of the navigable waters of the United States, and this carries with it the right to deposit the material removed in making the improvements in any other part of the harbor or navigable waters or other place within its control. (1899) 22 Op. Atty.-Gen. 646.

Sufficient indictment.—An indictment alleging that the defendants "did unlawfully dump, discharge, and deposit, and aid and

abet in the dumping," and that the place of such wrongful act was "at the southern district of New York, within the admiralty and maritime jurisdiction of the United States and within the jurisdiction of this court," and that the discharge was "into the tidal waters of the harbor of New York and the waters adjacent thereto," is a sufficient charge to fall within the provisions of this Act as well as within the provisions of the earlier Act of June 29, 1888, as amended by the Act of Aug. 18, 1894. U. S. v. Moran, (1901) 113 Fed. Rep. 172.

SEC. 14. [*Use, etc., of government wharves, levees, etc., or materials therefrom forbidden.*] That it shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works; *Provided*, That the Secretary of War may, on the

recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest. [30 Stat. L. 1152.]

See note to section 8, *supra*.

SEC. 15. [*Obstruction of navigation by anchored or sunken vessels, floating logs, etc. — sunken vessels to be marked and removed.*] That it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for. [30 Stat. L. 1152.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

Vessel anchored in wide channel. — A liberal interpretation of the Act implies that navigation shall not be hindered or interfered with by obstruction, either by anchoring or otherwise, in such a manner as to prevent its safe accomplishment. This, however, has no application to a vessel anchored in a navigable channel over four miles in width. *The Northern Queen*, (1902) 117 Fed. Rep. 906.

Shallow-draft vessel anchoring in deep channel. — It is a violation of this section where a dredge anchors in a deep navigable

portion of the channel, when by reason of her draft she could have gone into shallower water, and out of a dangerous position. *The Itasca*, (1901) 117 Fed. Rep. 885.

Anchoring in fog. — Where by reason of a fog it was necessary for a vessel to anchor in the Hudson river, and before doing so she made her way toward the anchorage grounds as far as was deemed safe, and on taking soundings there deemed that she was within the anchorage grounds, she will not be held liable under this section, as she had taken due precaution. *The Newburgh*, (C. C. A. 1904) 130 Fed. Rep. 321.

SEC. 16. [*Penalties for violation of sections 13–15.*] That every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. And any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section thirteen of this Act to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of War, or who shall willfully injure or destroy any work of the United States contemplated in section fourteen of this Act, or who shall willfully obstruct the channel of any waterway in the manner con-

templated in section fifteen of this Act, shall be deemed guilty of a violation of this Act, and shall upon conviction be punished as hereinbefore provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be liable for the pecuniary penalties specified in this section, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof. [30 Stat. L. 1153.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

SEC. 17. [*Proceedings for violations of Act.*] That the Department of Justice shall conduct the legal proceedings necessary to enforce the foregoing provisions of sections nine to sixteen, inclusive, of this Act; and it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of War or by any of the officials hereinafter designated, and it shall furthermore be the duty of said district attorneys to report to the Attorney-General of the United States the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of War by the Attorney-General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of War, and the United States collectors of customs and other revenue officers, shall have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the aforesaid sections of this Act, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under the provisions of this Act, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. [30 Stat. L. 1153.]

See note to section 8, *supra*.

SEC. 18. [*Obstruction of navigation by bridges — notice to alter — criminal proceedings and penalty on failure to alter — power to Supreme Court.*] That whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now constructed, or which may hereafter be constructed, over any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw opening or the draw span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the said Secretary, first giving the

parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes recommended by the Chief of Engineers that are required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings hereinafter mentioned may be taken. If the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect, as hereinbefore required, from the Secretary of War, and within the time prescribed by him willfully fail or refuse to remove the same or to comply with the lawful order of the Secretary of War in the premises, such persons, corporation, or association shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed: *Provided*, That in any case arising under the provisions of this section an appeal or writ of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court either by the United States or by the defendants. [30 Stat. L. 1153.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

The right of appeal to the judiciary in all questions in their nature judicial is preserved in the sections of the statute. The secretary of war has no power to carry out his decisions respecting these obstructions except through a court. Any question, whether of law or fact, essentially judicial, may be raised under these informations. A court of the United States stands always, by the clear provisions of the Act, between the decision of the secretary and its execution. There is, therefore, in the Act no delegation of judicial power to the secretary that is not open to review in the courts. The Act is constitutional and valid. *E. A. Chatfield Co. v. New Haven*, (1901) 110 Fed. Rep. 788; *U. S. v. Moline*, (1897) 82 Fed. Rep. 592.

Power delegated.—The section does not delegate to the secretary all the power of Congress in regard to the construction of bridges over navigable waters and to declare where bridges shall be built; it delegates the power only to determine whether an existing bridge is an unreasonable obstruction to navigation and to direct the manner in which the injury can be obviated. *E. A. Chatfield Co. v. New Haven*, (1901) 110 Fed. Rep. 788.

The unconstitutionality of this section upon the ground that it delegated to the secretary of war either judicial or legislative power was sustained in respect to section 9 of the River and Harbor Bill of 1888, a statute of different provisions, in *U. S. v. Keokuk, etc., Bridge Co.*, (1891) 45 Fed. Rep. 178, a case involving peculiar circumstances. A similar opinion was expressed, *obiter*, in *U. S. v. Rider*, (1892) 50 Fed. Rep. 406.

Jurisdiction of Circuit Court.—The right of private parties to invoke the aid of the courts of the United States, to prevent an unreasonable obstruction to navigation, which produces an especial injury to them, depends upon the effect which may be given to this statute. It is therefore a case arising under the laws of the United States, and the Circuit Court has jurisdiction to determine whether the bill has stated a cause of action which entitles the complainant to relief. *E. A. Chatfield Co. v. New Haven*, (1901) 110 Fed. Rep. 788. (*Citing New Orleans, etc., R. Co. v. Mississippi*, (1880) 102 U. S. 135; *Tennessee v. Davis*, (1879) 100 U. S. 257; *Little York Gold-Washing, etc., Co. v. Keyes*, (1877) 96 U. S. 199.)

Temporary obstruction during repair of bridge.—Where a bridge built by a railroad company, properly authorized so to do by law, was blown down, and the company during the time in which they were repairing the bridge maintained a structure which was an obstruction to navigation, but made arrangements with the lines of steamboats carrying the freight on the river for the transferring of the freight at the place of obstruction without extra charge to shippers, this does not constitute such an unreasonable obstruction of the river as will entitle a shipper to recover damages by reason of greater amounts paid, extra labor, etc., in shipping his goods by railroad, especially where the traffic on the railroad over the bridge largely exceeded the traffic on the river, and the public convenience was therefore subserved by the mode of construction which was pursued. *Rhea v. Newport, etc., R. Co.*, (1892) 50 Fed. Rep. 16.

SEC. 19. [*Removal of sunken vessels, etc. — advertisement, proposals, and contract — proceeds.*] That whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft, or other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of War at his discretion, without liability for any damage to the owners of the same: *Provided*, That in his discretion, the Secretary of War may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern," in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof: *And provided also*, That the Secretary of War may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals and contracts, at his discretion, to be conditioned that such vessel, boat, water craft, raft, or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: *Provided*, That such bidder shall give satisfactory security to execute the work: *Provided further*, That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States. [30 Stat. L. 1154.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

This section supersedes, besides the section noted under sec. 9, *supra*, the provisions of the River and Harbor Appropriation Act of June 14, 1880, ch. 211, as follows:

"SEC. 4. Whenever hereafter the navigation of any river, lake, harbor, or bay, or other navigable water of the United States, shall be obstructed or endangered by any sunken vessel or water-craft, it shall be the duty of the Secretary of War, upon satisfactory information thereof, to cause reasonable notice, of not less than thirty days, to be given, personally or by publication, at least once a week in the newspaper published nearest the locality of such sunken vessel or craft, to all persons interested in such vessel or craft, or in the cargo thereof, of the purpose of said Secretary, unless such vessel or craft shall be removed as soon thereafter as practicable by the parties interested therein, to cause the same to be removed. If such sunken vessel or craft and cargo shall not be removed by the parties interested therein as soon as practicable after the date of the giving of such notice by publication, or after such personal service of notice, as the case may be, such sunken vessel or craft shall be treated as abandoned and derelict, and the Secretary of War shall proceed to remove the same. Such sunken vessel or craft and cargo and all property therein

when so removed shall, after reasonable notice of the time and place of sale, be sold to the highest bidder or bidders for cash, and the proceeds of such sales shall be deposited in the Treasury of the United States to the credit of a fund for the removal of such obstructions to navigation, under the direction of the Secretary of War, and to be paid out for that purpose on his requisition therefor. The provisions of this act shall apply to all such wrecks whether removed under this act or under any other act of Congress. Such sum of money as may be necessary to execute this section of this act is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be paid out on the requisition of the Secretary of War." [21 Stat. L. 197.]

It also supersedes the provisions of the River and Harbor Appropriation Act of Aug. 2, 1882, ch. 375, as follows:

"* * * "That the power and authority granted to the Secretary of War under and by virtue of section four of the act of Congress approved June fourteenth, eighteen hundred and eighty, relating to wrecks and sunken vessels be, and the same are hereby enlarged so that the Secretary of War may, in his discretion, sell and dispose of any such sunken craft, vessel, or cargo, or property therein, before the raising or removal thereof, according to the same regulations that are

in the said act prescribed for the sale of the same after the removal thereof; and all laws and parts of laws inconsistent herewith are hereby repealed." * * * [22 Stat. L. 208.]

Coastal waters of Cuba.—The Acts of June 14, 1880 (21 Stat. L. 197), and Aug. 2, 1882 (22 Stat. L. 208), which authorize the

secretary of war to remove sunken vessels or craft which obstruct the navigation of a "navigable" water of the United States, do not apply to the coastal waters of Cuba, as such waters do not become waters of the United States by reason of the temporary jurisdiction of the United States over that island. (1900) 23 Op. Atty.-Gen. 76.

SEC. 20. [*Removal of sunken or grounded vessels, etc., in emergency cases — expenses — sale — proceeds.*] That under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section nineteen, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: *Provided*, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: *And provided further*, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States.

Such sum of money as may be necessary to execute this section and the preceding section of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid out on the requisition of the Secretary of War.

That all laws or parts of laws inconsistent with the foregoing sections nine to twenty, inclusive, of this Act are hereby repealed: *Provided*, That no action begun or right of action accrued prior to the passage of this Act shall be affected by this repeal: *Provided further*, That nothing contained in the said foregoing sections shall be construed as repealing, modifying, or in any manner affecting the provisions of an Act of Congress approved June twenty-ninth, eighteen hundred and eighty-eight, entitled "An Act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, by dumping or otherwise, and to punish and prevent such offenses," as amended by section three of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four. [30 Stat. L. 1154, 32 Stat. L. 375.]

See note to section 8, *supra*.

See annotations under section 9, *supra*.

This section was amended by the Appropriation Act of June 13, 1902, ch. 1079, sec. 12, 32 Stat. L. 375, by adding the last paragraph as above given in place of the last paragraph of the section as originally enacted, which was as follows: "That all laws or parts of laws inconsistent with the foregoing sections ten to twenty, inclusive,

of this Act are hereby repealed: *Provided*, That no action begun, or right of action accrued, prior to the passage of this act shall be affected by this repeal."

Prior to the above amendment the clause stricken out had been amended by the Act of Feb. 20, 1900, ch. 23, 31 Stat. L. 32, by striking out the word "ten" after the word "sections," and inserting in place thereof the word "nine."

SEC. 11. [Enforcement of Act directed.] That it shall be the duty of officers and agents having the supervision, on the part of the United States, of the works in progress for the preservation and improvement of said navigable waters, and, in their absence, of the United States collectors of customs and other revenue officers to enforce the provisions of this act by giving information to the district attorney of the United States for the district in which any violation of any provision of this act shall have been committed: *Provided*, That the provisions of this act shall not apply to Torch Lake, Houghton County, Michigan. [26 Stat. L. 455.]

This is from the River and Harbor Appropriation Act of Sept. 19, 1890, ch. 907. The provisions in question are secs. 4-10 of the above Act, which are set forth *supra*, pp. 806,

806. These sections were superseded by the enactment of similar provisions in the Act of March 3, 1899, ch. 425, secs. 9-20, *supra*, p. 806 *et seq.*

An Act Authorizing the Secretary of War to make regulations governing the running of loose logs, steamboats, and rafts on certain rivers and streams.

[Act of May 9, 1900, ch. 357, 31 Stat. L. 172.]

[**SEC. 1.**] [*Floating logs and rafts on navigable waters.*] That the prohibition contained in section fifteen of the river and harbor Act, approved March third, eighteen hundred and ninety-nine, against floating loose timber and logs, or sack rafts, so called, of timber and logs in streams or channels actually navigated by steamboats, shall not apply to any navigable river or waterway of the United States or any part thereof whereon the floating of loose timber and logs and sack rafts of timber and logs is the principal method of navigation. But such method of navigation on such river or waterway or part thereof shall be subject to the rules and regulations prescribed by the Secretary of War as hereinafter provided. [31 Stat. L. 172.]

SEC. 2. [Regulations — publication — penalty for violation — procedure for enforcement.] That the Secretary of War shall have power, and he is hereby authorized and directed, within the shortest practicable time after the passage hereof, to prescribe rules and regulations, which he may at any time modify, to govern and regulate the floating of loose timber and logs, and sack rafts, (so called) of timber and logs and other methods of navigation on the streams and waterways, or any thereof, of the character, as to navigation, in section one hereof described. The said rules and regulations shall be so framed as to equitably adjust conflicting interests between the different methods or forms of navigation; and the said rules and regulations shall be published at least once in such newspaper or newspapers of general circulation as in the opinion of the Secretary of War shall be best adapted to give notice of said rules and regulations to persons affected thereby and locally interested therein. And all modifications of said rules and regulations shall be similarly published. And such rules and regulations when so prescribed and published as to any such stream or waterway shall have the force of law, and any violation thereof shall be a misdemeanor, and every person convicted of such violation shall be punished by a fine of not exceeding two thousand five hundred dollars nor less than five hundred dollars, or by imprisonment (in case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge

or court shall proceed in respect thereto as authorized by law in the case of crimes or misdemeanors committed against the United States. [*31 Stat. L. 172.*]

SEC. 3. [*Amendments.*] That the right to alter, amend, or repeal this Act at any time is hereby reserved. [*31 Stat. L. 172.*]

SEC. 4. [*Pending actions not affected.*] That this Act shall not, nor shall any rules or regulations prescribed thereunder, in any manner affect any civil action or actions heretofore commenced and now pending to recover damages claimed to have been sustained by reason of the violation of any of the terms of said section fifteen, as originally enacted, or in violation of any other law. [*31 Stat. L. 172.*]

SEC. 10. [*Provisions for authority for construction of bridges, extended to Illinois and Mississippi Canal.*] That the provisions of section nine of the river and harbor Act of March third, eighteen hundred and ninety-nine, are hereby made applicable alike to the completed and uncompleted portions of the Illinois and Mississippi Canal. Whenever the Secretary of War shall approve plans for a bridge to be built across said canal he may, in his discretion, and subject to such terms and conditions as in his judgment are equitable, expedient, and just to the public, grant to the person or corporation building and owning such bridge a right of way across the lands of the United States on either side of and adjacent to the said canal; also the privilege of occupying so much of said lands as may be necessary for the piers, abutments, and other portions of the bridge structure and approaches. [*32 Stat. L. 374.*]

This is from the River and Harbor Appropriation Act of June 13, 1902, ch. 1079.

[III. ANCHORAGE AND HARBOR REGULATIONS.]'

An act relating to the anchorage of vessels in the port of New York.

[*Act of May 16, 1888, ch. 257, 25 Stat. L. 151.*]

[SEC. 1.] [*Anchorage grounds and regulations for port of New York.*] That the Secretary of the Treasury is authorized, empowered, and directed to define and establish an anchorage ground for vessels in the bay and harbor of New York, and in the Hudson and East Rivers, to adopt suitable rules and regulations in relation thereto, and to take all necessary measures for the proper enforcement of such rules and regulations. [*25 Stat. L. 151.*]

SEC. 2. [*Penalty for violating regulations.*] That in the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars, and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be, and in the name of the officer designated by the Secretary of the Treasury. [*25 Stat. L. 151.*]

SEC. 3. [*In effect.*] That this act shall take effect immediately. [25 Stat. L. 151.]

Aiding vessel in distress.—A vessel approaching another vessel in distress and mooring to her for the purpose of immediate removal, though the vessel in distress may touch the bottom, is not within the contemplation of this Act of Congress. The *Monarch*, (1898) 89 Fed. Rep. 875. See also The *Chauncey M. Depew*, (1894) 59 Fed. Rep. 791.

Permit to anchor to raise wreck.—It is customary, when raising wrecks in navigable channels, to obtain a permit to anchor from the secretary of the treasury, and for revenue cutters to visit the vessels found at anchor off the prescribed anchorage ground to see if such permits have been secured. The *Chauncey M. Depew*, (1894) 59 Fed. Rep. 791.

Rights and liabilities of derrick raising

wreck.—The raising of sunken vessels and the use of the river for such purpose are legitimate and lawful, and the mere anchoring of a derrick in a channel for the purpose of raising a wreck is not an unlawful obstruction of navigation, except perhaps in the case of a passage so narrow that navigation is so completely obstructed as to amount to a nuisance, and where reasonable room remains for ordinary navigation the derrick cannot be held liable for damages sustained by vessels colliding with it; on the other hand, the derrick, not lying upon any authorized anchorage ground, is not entitled to all the immunity of vessels so anchored and lying out of the usual channel-way. The *Chauncey M. Depew*, (1894) 59 Fed. Rep. 791.

[SEC. 1.] [*Extension of preceding Act.*] * * * That the Act of May sixteenth, eighteen hundred and eighty-eight, relating to anchorage of vessels in the port of New York, is hereby extended to include the waters of Kill von Kull, Newark Bay, Arthur Kill, and Raritan Bay. * * * [30 Stat. L. 1081.]

This is from the Sundry Civil Appropriation Act of March 3, 1899, ch. 424.

An act relating to the anchorage and movement of vessels in the port of Chicago.

[Act of Feb. 6, 1893, ch. 64, 27 Stat. L. 431.]

[SEC. 1.] [*Anchorage grounds and regulations for port of Chicago.*] That the Secretary of the Treasury be authorized and directed to define and establish anchorage grounds for vessels in the harbors of Chicago, and waters of Lake Michigan adjacent thereto, to adopt suitable rules and regulations in relation to the same, and also to adopt suitable rules and regulations governing the use of marked inshore channels in Lake Michigan in front of the city of Chicago, and to take all necessary measures for the proper enforcement of such rules and regulations. [27 Stat. L. 431.]

SEC. 2. [*Penalty for violating regulations.*] That in the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars, and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be, and in the name of the officer designated by the Secretary of the Treasury. [27 Stat. L. 431.]

An act to establish harbor regulations for the District of Columbia.

[Act of March 2, 1895, ch. 172, 28 Stat. L. 740.]

[SEC. 1.] [*Harbor regulations for District of Columbia — anchored or moored vessels — sunken vessels.*] That every vessel coming to anchor in the Potomac River between the junction of the Washington and Georgetown chan-

nels of said river and the extension of the south line of P street southwest, in the city of Washington, shall anchor as near the flats in said river as possible, so that the channel of said river will not be obstructed; and if such vessel is to remain over twelve hours it shall be moored with both anchors, so as to give room for passing vessels and so as not to swing and obstruct said channel. No vessel shall be permitted to anchor in the Washington channel of the Potomac River between the extended lines of P or K streets south. Vessels coming to anchor above the line of K street south, aforesaid, shall come to anchor as near the flats as possible and so that the channel will not be obstructed; and all vessels coming to anchor shall be so moored by the use of both anchors as to prevent obstruction of the channel within four hundred feet of the nearest wharf, the said anchorage to continue only twenty-four hours, unless otherwise ordered or directed by the harbor master. No vessel shall be permitted to lie in Seventeenth Street Canal, New Jersey Avenue Canal, or James Creek Canal, or at the entrance thereof, so as to obstruct the passage of any vessel going into or out of the same or moving from one place to another therein, unless such obstructing vessel is actually engaged in loading or unloading, and shall then, if deemed expedient by the harbor master, be removed to such place as shall be necessary to give room to passing vessels. Any captain or owner of, or anyone in charge of, any barge, sand scow, or any vessel that may sink in said canals, shall raise and remove the same in five days. Any vessels at the end of wharves or in docks shall, when required by the harbor master, haul either way to accommodate vessels going in or coming out from such wharves or docks. They shall not occupy regular steamers' or sailing packets' berths without permission from the recognized occupants of such wharves and docks. And they are required to rig in all fore-and-aft spars, have boats hoisted up under the bow, and davits turned up, as the harbor master may direct. Vessels when not engaged in loading or discharging cargo shall give place to such vessels as are ready to receive or deliver freights. And if the captain or person in charge of any vessel refuse to move said vessel when notified by the occupant of the wharf at which she is lying, the harbor master shall order him to haul to some other berth, or into the stream. [28 Stat. L. 740.]

SEC. 2. [*Performance of harbor master's duties by pilot of police boat — penalty for violation of Act.*] That the powers and authority herein conferred upon the harbor master may, in his absence or temporary disability, be exercised by the pilot of the harbor police boat. Any person refusing to obey the instructions of the harbor master, or, in case of his absence or temporary disability, the said pilot of the harbor police boat, or any person failing to comply with any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or by both such punishments, in the discretion of the court. [28 Stat. L. 741]

SEC. 3. [*Repeal.*] That all Acts or parts of Acts inconsistent herewith are hereby repealed. [28 Stat. L. 741.]

An Act Relating to the anchorage and movements of vessels in Saint Marys River.

[*Act of March 6, 1896, ch. 49, 29 Stat. L. 54.*]

[SEC. 1.] [*Regulations for anchorage and movements of vessels in St. Mary's River.*] That the Secretary of the Treasury be, and he hereby is,

authorized and directed to adopt and prescribe suitable rules and regulations governing the movements and anchorage of vessels and rafts in Saint Marys River, from Point Iroquois, on Lake Superior, to Point Detour, on Lake Huron, and for the purpose of enforcing the observance of such regulations the said Secretary is hereby authorized to detail one or more revenue cutters for duty on said river. [29 Stat. L. 54.]

When special or general rules apply. — Such special rules for a particular locality, upon the principles of statutory construction, must take precedence over general rules where the special rules apply, while at all other places and even in the special places where the special rules do not cover the situation, the general rules of navigation

must dictate the movements of vessels. The North Star, (1901) 108 Fed. Rep. 436.

Presumed knowledge of rules. — Navigators of vessels on the lakes must be presumed to have knowledge of the rules and laws governing St. Mary's river. The North Star, (1901) 108 Fed. Rep. 436.

SEC. 2. [*Revenue-cutter service to enforce regulations.*] That all officers of the Revenue-Cutter Service who are directed to enforce the regulations prescribed by the above rules are hereby empowered and directed, in case of necessity, or when a proper notice has been disregarded, to use the force at their command to remove from channels or stop any vessel found violating the prescribed rules. [29 Stat. L. 55.]

SEC. 3. [*Penalty for violation of rules.*] That in the event of the violation of any such regulations or rules of the Secretary of the Treasury by the owners, master, or person in charge of such vessel, such owners, master, or person in charge shall be liable to a penalty of two hundred dollars, and the vessel, its tackle, apparel, furniture, and cargo, at any time used or employed in violation of such regulations, shall be forfeited to the United States: *Provided*, That the Secretary of the Treasury may remit said fine or release said vessel on such terms as he may prescribe: *Provided also*, That nothing in this Act shall be construed to amend or repeal the Act entitled "An Act to regulate navigation on the Great Lakes and connecting tributary waters as far east as Montreal." [29 Stat. L. 55.]

See the title COLLISIONS, vol. 2, p. 150.

An Act Relating to the anchorage of vessels in the Kennebec River at or near Bath, Maine.

[Act of June 6, 1900, ch. 319, 31 Stat. L. 682.]

[SEC. 1.] [*Anchorage grounds and regulations for port of Bath, Me.*] That the Secretary of the Treasury is authorized, empowered, and directed to define and establish an anchorage ground for vessels in Kennebec River at or near Bath, Maine, to adopt suitable rules and regulations in relation thereto, and to take all necessary measures for the proper enforcement of such rules and regulations. [31 Stat. L. 682.]

SEC. 2. [*Penalty for violation — procedure.*] That in the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars; and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which said vessel may be, and in the name of the officer designated by the Secretary of the Treasury. [31 Stat. L. 682.]

SEC. 3. [*In effect.*] That this Act shall take effect immediately. [31 Stat. L. 682.]

[IV. IMPROVEMENTS.]

Sec. 231. [*Report of examinations of river and harbor improvements.*] The Secretary of War shall cause to be prepared and submitted to Congress, in connection with the reports of examinations and surveys of rivers and harbors hereafter made by order of Congress, full statements of all existing facts tending to show to what extent the general commerce of the country will be promoted by the several works of improvements contemplated by such examinations and surveys, to the end that public moneys shall not be applied excepting where such improvements shall tend to subserve the general commercial and navigation interests of the United States. [R. S.]

Res. of July 27, 1868, No. 76, 15 Stat. L. 262.

Sec. 5253. [*Employment of civil engineers on western and northwestern rivers.*] The Chief of Engineers may, with the approval of the Secretary of War, employ such civil engineers, not exceeding five in number, for the purpose of executing the surveys and improvements of western and northwestern rivers, ordered by Congress, as may be necessary to the proper and diligent prosecution of the same; and the persons so employed may be allowed a reasonable compensation for their services, not to exceed the sum of three thousand dollars a year. [R. S.]

Res. of March 29, 1867, No. 27, 15 Stat. L. 28.

SEC. 8. [*Names of civilian engineers to be reported to Congress, etc.*] That the Secretary of War shall report to Congress, at its next and each succeeding session thereof, the name and place of residence of each civilian engineer employed in the work of improving rivers and harbors by means and as the result of appropriations made in this and succeeding river and harbor appropriation bills, the time so employed, the compensation paid, and the place at and work on which employed. [24 Stat. L. 335.]

This is from the River and Harbor Appropriation Act of Aug. 5, 1886, ch. 929.

An act to facilitate the prosecution of works projected for the improvement of rivers and harbors.

[Act of April 24, 1888, ch. 194, 25 Stat. L. 94.]

[*Condemnation, purchase, or donation of land and materials for river and harbor improvement.*] That the Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, right of way, or material needed to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided, however,* That when the owner of such land, right of way, or material shall fix a price for the same, which in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay: *And provided further,* That the Secretary of War is

hereby authorized to accept donations of lands or materials required for the maintenance or prosecution of such works. [25 Stat. L. 94.]

Condemnation of land for sites for public buildings. See PUBLIC PROPERTY, BUILDINGS, AND GROUNDS, *ante*, p. 672.

SEC. 3. [*Application of appropriations — contracts.*] That it shall be the duty of the Secretary of War to apply the money herein and hereafter appropriated for improvements of rivers and harbors, other than surveys, estimates and gaugings, in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecution and completion of the work according to such contract. [25 Stat. L. 423.]

This and sections 8 and 11 following are from the River and Harbor Appropriation Act of Aug. 11, 1888, ch. 860.

SEC. 8. [*Annual report of engineers.*] That the Secretary of War shall cause the manuscript of the annual report of the Chief of Engineers and subordinate engineers, relating to the improvement of rivers and harbors, and the report of the Mississippi and Missouri River Commissions to be placed in the hands of the Public Printer on or before the fifteenth day of October in each year, and the Public Printer shall cause said reports to be printed with an accurate and comprehensive index thereof, on or before the first Monday in December in each year, for the use of Congress. [25 Stat. L. 424.]

See note to section 3, *supra*.

SEC. 11. [*Construction of fish-ways.*] Whenever the improvements provided for by this act, or those which have heretofore been prosecuted by the United States, or may hereafter be undertaken, shall be found to operate (whether by lock and dam or otherwise), as obstructions to the passage of fish, the Secretary of War may, in his discretion, direct and cause to be constructed practical and sufficient fish-ways, to be paid for out of the general appropriations for the streams on which such fish-ways may be constructed. [25 Stat. L. 425.]

See note to section 3, *supra*.

SEC. 2. [*Two or more works may be in one contract, etc.*] That nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract, where such works are situated in the same region and of the same kind or character. * * * [26 Stat. L. 426.]

This is from the River and Harbor Appropriation Act of Sept. 19, 1890, ch. 907. R. S. sec. 3717 is set out in PUBLIC CONTRACTS, *supra*, p. 107.

SEC. 5. [*Appropriations not to be expended for dredging inside harbor lines.*] That no money appropriated for the improvement of rivers and harbors in this act or hereafter, shall be expended for dredging inside of harbor lines duly established. [27 Stat. L. 111.]

This is from the River and Harbor Appropriation Act of July 13, 1892, ch. 158.

[SEC. 1.] [*Acceptance of dredger, etc., from California.*] * * * The Secretary of War is hereby authorized to accept from the State of California the use of any dredger, or appliances owned or controlled by said State, conformably to any offer thereof by the said State; and the Secretary of War is hereby authorized to use any such dredger or appliances in any river or harbor improvement that may be prosecuted therein by the United States, either on the part of the United States alone or conjointly with said State; *Provided*, That nothing shall be paid to the State of California for the use of said dredger, and that nothing herein contained shall create any liability against the United States. * * * [30 Stat. L. 1148.]

This is from the River and Harbor Appropriation Act of March 3, 1899, ch. 425. * * * *ERIAL LANDS, MINES, AND MINING*, vol. 5, p. 61 *et seq.*

California Débris Commission.—See MIN-

SEC. 2. [*Preliminary examinations, etc., for new works restricted—supplemental reports and estimates restricted.*] * * * That no preliminary examination, survey, project, or estimate for new works other than those designated in this or some prior Act or resolution shall be made: *Provided further*, That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed, are submitted no supplemental or additional report or estimate shall be made unless ordered by a concurrent resolution of Congress. The Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until funds for the commencement of the proposed work shall have been actually appropriated by law. [32 Stat. L. 372.]

This and sections 3 and 5 following are from the River and Harbor Appropriation Act of June 13, 1902, ch. 1079.

SEC. 3. [*Board of engineer officers to consider and report upon river and harbor improvements—duties—expenses.*] That there shall be organized in the Office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of five engineer officers, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred for consideration and recommendation, in addition to any other duties assigned, so far as in the opinion of the Chief of Engineers may be necessary, all reports upon examinations and surveys provided for by Congress, and all projects or changes in projects for works of river and harbor improvement heretofore or hereafter provided for. And the board shall submit to the Chief of Engineers recommendations as to the desirability of commencing or continuing any and all improvements upon which reports are required. And in the consideration of such works and projects the board shall have in view the amount and character of commerce existing or reasonably prospective which will be benefited by

hereby authorized to accept donations of lands or materials required for the maintenance or prosecution of such works. [25 Stat. L. 94.]

Condemnation of land for sites for public buildings. See PUBLIC PROPERTY, BUILDINGS, AND GROUNDS, *ante*, p. 672.

SEC. 3. [*Application of appropriations — contracts.*] That it shall be the duty of the Secretary of War to apply the money herein and hereafter appropriated for improvements of rivers and harbors, other than surveys, estimates and gaugings, in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecution and completion of the work according to such contract. [25 Stat. L. 423.]

This and sections 8 and 11 following are from the River and Harbor Appropriation Act of Aug. 11, 1888, ch. 860.

SEC. 8. [*Annual report of engineers.*] That the Secretary of War shall cause the manuscript of the annual report of the Chief of Engineers and subordinate engineers, relating to the improvement of rivers and harbors, and the report of the Mississippi and Missouri River Commissions to be placed in the hands of the Public Printer on or before the fifteenth day of October in each year, and the Public Printer shall cause said reports to be printed with an accurate and comprehensive index thereof, on or before the first Monday in December in each year, for the use of Congress. [25 Stat. L. 424.]

See note to section 3, *supra*.

SEC. 11. [*Construction of fish-ways.*] Whenever the improvements provided for by this act, or those which have heretofore been prosecuted by the United States, or may hereafter be undertaken, shall be found to operate (whether by lock and dam or otherwise), as obstructions to the passage of fish, the Secretary of War may, in his discretion, direct and cause to be constructed practical and sufficient fish-ways, to be paid for out of the general appropriations for the streams on which such fish-ways may be constructed. [25 Stat. L. 425.]

See note to section 3, *supra*.

SEC. 2. [*Two or more works may be in one contract, etc.*] That nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract, where such works are situated in the same region and of the same kind or character. * * * [26 Stat. L. 426.]

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SEC. 5. [*Appropriations not to be expended for dredging inside harbor lines.*] That no money appropriated for the improvement of rivers and harbors in this act or hereafter, shall be expended for dredging inside of harbor lines duly established. [27 Stat. L. 111.]

This is from the River and Harbor Appropriation Act of July 13, 1892, ch. 158.

[SEC. 1.] [*Acceptance of dredger, etc., from California.*] * * * The Secretary of War is hereby authorized to accept from the State of California the use of any dredger, or appliances owned or controlled by said State, conformably to any offer thereof by the said State; and the Secretary of War is hereby authorized to use any such dredger or appliances in any river or harbor improvement that may be prosecuted therein by the United States, either on the part of the United States alone or conjointly with said State; *Provided*, That nothing shall be paid to the State of California for the use of said dredger, and that nothing herein contained shall create any liability against the United States. * * * [30 Stat. L. 1148.]

This is from the River and Harbor Appropriation Act of March 3, 1899, ch. 425. *ERAL LANDS, MINES, AND MINING*, vol. 5, p. 61 *et seq.*
California Débris Commission. — See MIN-

SEC. 2. [*Preliminary examinations, etc., for new works restricted — supplemental reports and estimates restricted.*] * * * That no preliminary examination, survey, project, or estimate for new works other than those designated in this or some prior Act or resolution shall be made: *Provided further*, That after the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed, are submitted no supplemental or additional report or estimate shall be made unless ordered by a concurrent resolution of Congress. The Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until funds for the commencement of the proposed work shall have been actually appropriated by law. [32 Stat. L. 372.]

This and sections 3 and 5 following are from the River and Harbor Appropriation Act of June 13, 1902, ch. 1079.

SEC. 3. [*Board of engineer officers to consider and report upon river and harbor improvements — duties — expenses.*] That there shall be organized in the Office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of five engineer officers, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred for consideration and recommendation, in addition to any other duties assigned, so far as in the opinion of the Chief of Engineers may be necessary, all reports upon examinations and surveys provided for by Congress, and all projects or changes in projects for works of river and harbor improvement heretofore or hereafter provided for. And the board shall submit to the Chief of Engineers recommendations as to the desirability of commencing or continuing any and all improvements upon which reports are required. And in the consideration of such works and projects the board shall have in view the amount and character of commerce existing or reasonably prospective which will be benefited by

the improvement, and the relation of the ultimate cost of such work, both as to cost of construction and maintenance, to the public commercial interests involved, and the public necessity for the work and propriety of its construction, continuance, or maintenance at the expense of the United States. And such consideration shall be given as time permits to such works as have heretofore been provided for by Congress, the same as in the case of new works proposed. The board shall, when it considers the same necessary, and with the sanction and under orders from the Chief of Engineers, make, as a board or through its members, personal examinations of localities. And all facts, information, and arguments which are presented to the board for its consideration in connection with any matter referred to it by the Chief of Engineers shall be reduced to and submitted in writing, and made a part of the records of the Office of the Chief of Engineers. It shall further be the duty of said board, upon a request transmitted to the Chief of Engineers by the Committee on Rivers and Harbors of the House of Representatives, or the Committee on Commerce of the Senate, in the same manner to examine and report through the Chief of Engineers upon any projects heretofore adopted by the Government or upon which appropriations have been made, and report upon the desirability of continuing the same or upon any modifications thereof which may be deemed desirable.

The board shall have authority, with the approval of the Chief of Engineers, to rent quarters, if necessary, for the proper transaction of its business, and to employ such civil employees as may, in the opinion of the Chief of Engineers, be required for properly transacting the business assigned to it, and the necessary expenses of the board shall be paid from allotments made by the Chief of Engineers from any appropriations made by Congress for the work or works to which the duties of the board pertain. [32 Stat. L. 372.]

See note to section 2, *supra*.

SEC. 5. [*Unserviceable property may be sold — transfer of property.*] That when any land or other property which has been heretofore or may be hereafter purchased or acquired for the improvement of rivers and harbors is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of War may direct, and the proceeds credited to the appropriation for the work for which it was purchased or acquired; and the Secretary of War may direct the transfer of any property employed in river and harbor works, and in such event the property so transferred shall be valued and credited to the project upon which it was theretofore used and charged to the project to which it shall be transferred. The Secretary may also direct a temporary transfer of any property employed in the improvement of rivers and harbors whenever, in his judgment, such transfer would secure efficient or economical results, and such adjustment in the way of charges and credits shall be made between the projects affected as may be equitable. [32 Stat. L. 374.]

See note to section 2, *supra*.

[V. IMPROVEMENT OF MISSISSIPPI AND MISSOURI RIVERS.]

Sec. 5252. [*Water-gauges on the Mississippi river and tributaries.*] The Secretary of War is hereby authorized and directed to have water-gauges established, and daily observations made of the rise and fall of the Lower Mississippi

River and its chief tributaries, at or in the vicinity of Saint Louis, Cairo, Memphis, Helena, Napoleon, Providence, Vicksburgh, Red River Landing, Baton Rouge, and Carrollton, on the Mississippi, between the mouth of the Missouri and the Gulf of Mexico; and at or in the vicinity of Fort Leavenworth, on the Missouri; Rock Island, on the Upper Mississippi; Louisville, on the Ohio; Florence, on the Tennessee; Jacksonport, on the White River; Little Rock, on the Arkansas; and Alexandria, on the Red River; and at such other places as the Secretary of War may deem advisable. The expenditure for the same shall be made from the appropriation for the improvement of rivers and harbors; but the annual cost of the observations shall not exceed the sum of five thousand dollars. [R. S.]

Res. of Feb. 21, 1871, No. 40, 16 Stat. L. 598.

An act to facilitate the execution of, and to protect certain public works of improvement at the mouth of the Mississippi River.

[Act of June 1, 1874, ch. 201, 18 Stat. L. 50.]

[Control of channel at mouth of Mississippi river — regulations — obstructions.] That from and after the passage of this act the Secretary of War is directed to assume full control over the particular channel at the mouth of the Mississippi River in course of excavation or improvement by the Government of the United States, so far as may be necessary to the carrying on and protection of such excavation and improvement, and until the same be completed; and he may establish such regulations respecting the use of, or passage through, such channel as he shall deem needful to fully protect the channel and to facilitate the excavation, improvement and use thereof. Such regulations shall be promulgated by publication thereof for ten days consecutively in two daily papers published in New Orleans, Louisiana, and the same may in like manner be changed from time to time; and any person interfering with, or obstructing, or attempting to obstruct the said improvements, and any person who shall willfully or negligently strand or sink any boat or craft in said channel, or who shall willfully, or negligently obstruct said channel, or cause any impairment injury, filling up, or shoaling therein, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding, five hundred dollars, or imprisonment for not more than six months, or both, in the discretion of the court. [18 Stat. L. 50.]

An act to provide for the appointment of a "Mississippi River Commission" for the improvement of said river from the Head of the Passes near its mouth to its headwaters.

[Act of June 28, 1879, ch. 43, 21 Stat. L. 37.]

[SEC. 1.] [Mississippi River Commission created.] That a commission is hereby created to be called "The Mississippi River Commission", to consist of seven members. [21 Stat. L. 37.]

SEC. 2. [Members of commission — appointment — compensation.] The President of the United States shall, by and with the advice and consent of the Senate, appoint seven commissioners, three of whom shall be selected from the Engineer Corps of the Army, one from the Coast and Geodetic Survey, and three from civil life, two of whom shall be civil engineers. And any vacancy which may occur in the commission shall in like manner be filled by the President of the United States; and he shall designate one of the commis-

sioners appointed from the Engineer Corps of the Army to be president of the commission. The commissioners appointed from the Engineer Corps of the Army and the Coast and Geodetic Survey shall receive no other pay or compensation than is now allowed them by law, and the other three commissioners shall receive as pay and compensation for their services each the sum of three thousand dollars per annum; and the commissioners appointed under this act shall remain in office subject to removal by the President of the United States. [21 Stat. L. 37.]

Salaries and expenses of civil members.—The salaries and traveling expenses of the members of the Mississippi river commission appointed from civil life (Congress having failed to make a specific appropriation therefor) cannot lawfully be defrayed out of the fund provided for the Mississippi river improvement. The application of such fund to that object would be inconsistent with sec. 3678 R. S. (1886) 18 Op. Atty.-Gen. 463.

Mileage for members from engineer corps.

—The members of the Mississippi river commission who are appointed from the engineer corps of the army are entitled to mileage at the rate of eight cents per mile, for all travel required of them by that commission pertinent to the objects for which it was constituted. Travel so required is travel under orders within the meaning of section 2 of the Act of July 24, 1876, ch. 226. (1880) 16 Op. Atty.-Gen. 559.

SEC. 3. [Duties — assistants — additional force.] It shall be the duty of said commission to direct and complete such surveys of said river, between the Head of the Passes near its mouth to its headwaters as may now be in progress, and to make such additional surveys, examinations, and investigations, topographical, hydrographical, and hydrometrical, of said river and its tributaries, as may be deemed necessary by said commission to carry out the objects of this act. And to enable said commission to complete such surveys, examinations, and investigations, the Secretary of War shall, when requested by said commission, detail from the Engineer Corps of the Army such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the Secretary of the Treasury shall, when requested by said commission in like manner detail from the Coast and Geodetic Survey such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the said commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such vessels or boats and such instruments and means as may be deemed necessary. [21 Stat. L. 37.]

SEC. 4. [Duties — plans and estimates — reports.] It shall be the duty of said commission to take into consideration and mature such plan or plans and estimates as will correct, permanently locate, and deepen the channel and protect the banks of the Mississippi River; improve and give safety and ease to the navigation thereof; prevent destructive floods; promote and facilitate commerce, trade, and the postal service; and when so prepared and matured, to submit to the Secretary of War a full and detailed report of their proceedings and actions, and of such plans, with estimates of the cost thereof, for the purposes aforesaid, to be by him transmitted to Congress: *Provided*, That the commission shall report in full upon the practicability, feasibility, and probable cost of the various plans known as the jetty system, the levee system, and the outlet system, as well as upon such others as they deem necessary. [21 Stat. L. 38.]

SEC. 5. [*Immediate works.*] The said commission may, prior to the completion of all the surveys and examinations contemplated by this act, prepare, and submit to the Secretary of War plans, specifications, and estimates of costs for such immediate works as, in the judgment of said commission, may constitute a part of the general system of works herein contemplated, to be by him transmitted to Congress. [21 Stat. L. 38.]

SEC. 6. [*Secretary of commission.*] The Secretary of War may detail from the Engineer Corps of the Army of the United States an officer to act as secretary of said commission. [21 Stat. L. 38.]

SEC. 8. [*Headquarters and meetings.*] That the headquarters and general offices of said commission shall be located at some city or town on the Mississippi River, to be designated by the Secretary of War, and the meetings of the commission except such as are held on Government boats during the time of the semiannual inspection trips of the commission shall be held at said headquarters and general offices, the times of said meetings to be fixed by the president of the commission, who shall cause due notice of such meetings to be given members of the commission and the public. [31 Stat. L. 792.]

This section was added to the above Act by the Act of Feb. 18, 1901, ch. 377.

SEC. 4. [*Permanent appropriation for examinations and surveys at South Pass, Mississippi river.*] That for the purpose of securing the uninterrupted examinations and surveys at the South Pass of the Mississippi River, as provided for in the act of March third, eighteen hundred and seventy-five, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the amount appropriated in this act for such purpose: *Provided, however,* That an itemized statement of said expenditures shall accompany the Annual Report of the Chief of Engineers. [25 Stat. L. 424.]

This is from the River and Harbor Appropriation Act of Aug. 11, 1888, ch. 860.

[SEC. 1.] [*Examinations and surveys continued.*] * * * The provisions of the Act of March third, eighteen hundred and seventy-five, and of the Act of August eleventh, eighteen hundred and eighty-eight, with regard to examinations and surveys at South Pass, mouth of the Mississippi River, shall remain in force as fully as though they were herein reenacted in express terms, notwithstanding the termination of the contract with the late James B. Eads and associates. * * * [32 Stat. L. 340.]

This is from the River and Harbor Appropriation Act of June 13, 1902, ch. 1079. The Act of March 3, 1875, ch. 134, secs. 4 to the end, 18 Stat. L. 463, provides for a contract with James B. Eads for the con-

struction of jetties to maintain the channel between South Pass and the Gulf of Mexico, and makes provisions for payments and surveys for location of the jetties.

SEC. 6. [*Permanent appropriation for gauging waters of Mississippi river.*] That for the purpose of securing the uninterrupted gauging of the waters of the Mississippi River and its tributaries, as provided for in joint resolution of the twenty-first of February, eighteen hundred and seventy-one, upon the application of the Chief of Engineers, the Secretary of War is hereby authorized to draw his warrant or requisition, from time to time, upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of nine thousand six hundred dollars: *Provided, however,* That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. [32 Stat. L. 374.]

This is from the River and Harbor Appropriation Act of Aug. 11, 1888, ch. 860, 25 Stat. L. 424, as amended by the Appropria-

tion Act of June 13, 1902, ch. 1079, sec. 9, 32 Stat. L. 374.

[SEC. 1.] [*Missouri River Commission abolished.*] * * * So much of the Act entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved July fifth, eighteen hundred and eighty-four, as provides for the creation of a commission to be called the Missouri River Commission, and prescribes the manner of appointment, the compensation, the powers, the duties, the expenditures, and the reports thereof, be, and the same is hereby, repealed, said repeal to take effect from and after June thirtieth, nineteen hundred and two. And said Commission shall prepare and submit through the Chief of Engineers to the Secretary of War, to be by him transmitted to Congress, a full and detailed report of all their proceedings and actions since the date of their last report, and of all such plans and systems of work as may now be devised and in progress and carried out by them, and of all such additional plans and systems of works as may be devised and matured by them, with full and detailed estimates of the cost thereof, and statements of all expenditures made by them, and shall on said thirtieth day of June, nineteen hundred and two, transfer to and place under the control of the Secretary of War, or such engineer officers as he may designate, all such vessels, barges, machinery, and instruments, and such other plant or property as pertains to the improvement of the Missouri River at and below Sioux City, or of the Gasconade and Osage rivers, in the State of Missouri. And the Secretary of War shall, after said thirtieth day of June, nineteen hundred and two, superintend and control all property theretofore under the control of said Commission, and all works theretofore under their supervision, and shall expend for the purposes for which they were appropriated all appropriations made herein, and all unexpended balances of appropriations heretofore made for the improvement of said rivers, which shall remain on hand on the said thirtieth day of June, nineteen hundred and two, and all appropriations which may hereafter be made for said rivers, or so much thereof as may be necessary. [32 Stat. L. 367.]

This is from the River and Harbor Appropriation Act of June 13, 1902, ch. 1079. The provisions of the Act of July 5, 1884, ch. 229, repealed by the above provision were as follows:

"[SEC. 1.] [*Missouri River Commission created.*] * * * That a Commission to be called the Missouri River Commission is hereby created, to consist of five members. [23 Stat. L. 144.]

"[*Members of Commission — appointment — compensation.*] That the President shall nominate and, by and with the advice and consent of the Senate, appoint five Commissioners, three of whom shall be selected from the Corps of Engineers of the Army and two from civil life, one of whom at least shall be a civil Engineer; and he shall in like manner fill any vacancy in said Commission; and he shall designate one of the Commis-

sioners appointed from the Corps of Engineers to be president of the Commission. The Commissioners appointed from the Corps of Engineers shall receive no other pay or compensation than is allowed them by law, and the other two Commissioners shall each receive for their services pay at the rate of two thousand five hundred dollars per annum, out of any money appropriated for the Missouri River; and all said Commissioners shall remain in office subject to removal by the President of the United States. [23 Stat. L. 144.]

"[*Duties of Commission — assistants — additional force.*] That it shall be the duty of said Commission to superintend and direct such improvement of said river and to carry into execution such plans for the improvement of the navigation of said river from its mouth to its headwaters as may now be devised and in progress, and to continue and complete such surveys as may now be in progress, and to make such additional surveys, examinations, and investigations, topographical, hydrographical, and hydro-metrical and to consider, devise, and mature such additional plan or plans, and all such estimates as may be deemed necessary and best, to obtain and maintain a channel and depth of water in said river sufficient for the purposes of commerce and navigation, and to accomplish the objects of this act, and to enable the Commission to perform the duties assigned them the Secretary of War is hereby authorized and directed to transfer to and place under the control and superintendence of said Commission all such vessels, barges, machinery, and instruments and such plant as may now be provided, devised, or in use on said river, from appropriations heretofore made for said river, or other sources, and when thereto requested by said Commission to detail from the Corps of Engineers such officers and men as may be necessary, and to place in the charge of said Commission any such vessels, machinery,

and instruments under his control as may be deemed necessary. And said Commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such additional vessels, boats, machinery, instruments, and means, as may be deemed necessary; to be paid for by appropriations made or to be made for said river. [23 Stat. L. 144.]

"[*Expenditure of appropriations — report of proceedings — detail of a secretary.*] That the said Commission shall, under the direction and with the approval of the Secretary of War, superintend, control, and expend for the purposes of this act all appropriations or unexpended balances heretofore made for the improvement of said river, and which may hereafter be made for said river, or so much thereof as may be necessary, and shall prepare and submit, through the Chief of the Engineer Corps to the Secretary of War, to be by him transmitted to Congress at the beginning of the regular session in December of each year, a full and detailed report of all their proceedings and actions, and of all such plans and systems of work as may now be devised and in progress and carried out by them, and of all such additional plans and systems of works as may be devised and matured by them, with full and detailed estimates of the cost thereof, and statements of all expenditures made by them; and the Secretary of War may detail from the Corps of Engineers or other corps of the Army an officer to act as secretary of the Commission, to aid them in their work; and all money hereby or hereafter appropriated for the improvement of said Missouri River shall be expended under the direction of the Secretary of War in accordance with the plans, specifications, and recommendations of said Commission when such plans, specifications, and recommendations shall have been approved by Congress." * * * [23 Stat. L. 145.]

[VI. ISTHMIAN CANAL.]

An Act To provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans.

[Act of June 28, 1902, ch. 1302, 32 Stat. L. 481.]

[SEC. 1.] [*Isthmian canal — purchase of rights, etc., of new Panama Canal Company authorized.*] That the President of the United States is hereby authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and

sixty-three shares of the Panama Railroad Company, owned by or held for the use of said canal company, provided a satisfactory title to all of said property can be obtained. [32 Stat. L. 481.]

For an elaborate discussion of the title to the Panama canal property, the histories of the prior companies, and the Acts of the foreign countries under which such companies were established, the validity of the

title received by the United States and the obligations of the United States to the stockholders, etc., of the vending companies, see (1902) 24 Op. Atty.-Gen. 144.

SEC. 2. [*Acquisition of right of way from Colombia — jurisdiction — police regulations, etc.*] That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations.

The President may acquire such additional territory and rights from Colombia as in his judgment will facilitate the general purpose hereof. [32 Stat. L. 481.]

SEC. 3. [*Payments — construction of canal, terminals, defenses, etc. — employees.*] That when the President shall have arranged to secure a satisfactory title to the property of the New Panama Canal Company, as provided in section one hereof, and shall have obtained by treaty control of the necessary territory from the Republic of Colombia, as provided in section two hereof, he is authorized to pay for the property of the New Panama Canal Company forty millions of dollars and to the Republic of Colombia such sum as shall have been agreed upon, and a sum sufficient for both said purposes is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid on warrant or warrants drawn by the President.

The President shall then through the Isthmian Canal Commission hereinafter authorized cause to be excavated, constructed, and completed, utilizing to that end as far as practicable the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship canal from the Caribbean Sea to the Pacific Ocean. Such canal shall be of sufficient capacity and depth as shall afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also cause to be constructed such safe and commodious harbors at the termini of said canal, and make such provisions for defense as may be necessary for the safety and protection of said canal and harbors. That the President is authorized for the purposes aforesaid to employ such persons as he may deem necessary, and to fix their compensation. 32 Stat. I. 482.]

SEC. 4. [*Alternative Nicaragua route — appropriation — surveys.*] That should the President be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this Act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the Nicaragua route, shall through the said Isthmian Canal Commission cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea near Greytown, by way of Lake Nicaragua, to a point near Brito on the Pacific Ocean. Said canal shall be of sufficient capacity and depth to afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also construct such safe and commodious harbors at the termini of said canal as shall be necessary for the safe and convenient use thereof, and shall make such provisions for defense as may be necessary for the safety and protection of said harbors and canal; and such sum or sums of money as may be agreed upon by such treaty as compensation to be paid to Nicaragua and Costa Rica for the concessions and rights hereunder provided to be acquired by the United States, are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid on warrant or warrants drawn by the President.

The President shall cause the said Isthmian Canal Commission to make such surveys as may be necessary for said canal and harbors to be made, and in making such surveys and in the construction of said canal may employ such persons as he may deem necessary, and may fix their compensation.

In the excavation and construction of said canal the San Juan River and Lake Nicaragua, or such parts of each as may be made available, shall be used. [*32 Stat. L. 482.*]

SEC. 5. [*Preliminary appropriation — contracts — limit of expenditures.*] That the sum of ten million dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, toward the project herein contemplated by either route so selected.

And the President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this Act. Appropriations therefor shall from time to time be hereafter made, not to exceed in the aggregate the additional sum of one hundred and thirty-five millions of dollars should the Panama route be adopted, or one hundred and eighty millions of dollars should the Nicaragua route be adopted. [*32 Stat. L. 483.*]

SEC. 6. [*Use of canal, etc., by Colombia, Nicaragua and Costa Rica.*] That in any agreement with the Republic of Colombia, or with the States of Nicaragua and Costa Rica, the President is authorized to guarantee to said Republic or to said States the use of said canal and harbors, upon such terms as may be agreed upon, for all vessels owned by said States or by citizens thereof. [*32 Stat. L. 483.*]

SEC. 7. [*Isthmian Canal Commission — compensation — engineers — reports — offices.*] That to enable the President to construct the canal and works appurtenant thereto as provided in this Act, there is hereby created the Isthmian Canal Commission, the same to be composed of seven members, who shall be nominated and appointed by the President, by and with the advice and consent of the Senate, and who shall serve until the completion of said canal unless sooner removed by the President, and one of whom shall be named as the chairman of said Commission. Of the seven members of said Commission at least four of them shall be persons learned and skilled in the science of engineering, and of the four at least one shall be an officer of the United States Army, and at least one other shall be an officer of the United States Navy, the said officers respectively being either upon the active or the retired list of the Army or of the Navy. Said commissioners shall each receive such compensation as the President shall prescribe until the same shall have been otherwise fixed by the Congress. In addition to the members of said Isthmian Canal Commission, the President is hereby authorized through said Commission to employ in said service any of the engineers of the United States Army at his discretion, and likewise to employ any engineers in civil life, at his discretion, and any other persons necessary for the proper and expeditious prosecution of said work. The compensation of all such engineers and other persons employed under this Act shall be fixed by said Commission, subject to the approval of the President. The official salary of any officer appointed or employed under this Act shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act. Said Commission shall in all matters be subject to the direction and control of the President, and shall make to the President annually and at such other periods as may be required, either by law or by the order of the President, full and complete reports of all their actings and doings and of all moneys received and expended in the construction of said work and in the performance of their duties in connection therewith, which said reports shall be by the President transmitted to Congress. And the said Commission shall furthermore give to Congress, or either House of Congress, such information as may at any time be required either by Act of Congress or by the order of either House of Congress. The President shall cause to be provided and assigned for the use of the Commission such offices as may, with the suitable equipment of the same, be necessary and proper, in his discretion, for the proper discharge of the duties thereof. [32 Stat. L. 483.]

SEC. 8. [*Bond issue to defray expenses.*] That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures authorized by this Act (such proceeds when received to be used only for the purpose of meeting such expenditures), the sum of one hundred and thirty million dollars, or so much thereof as may be necessary, and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of twenty dollars or some multiple of that sum, redeemable in gold coin at the pleasure of the United States after ten years from the date of their issue, and payable thirty years from such date, and bearing interest payable quarterly in gold coin at the rate of two per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That said bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may pre-

scribe, giving to all citizens of the United States an equal opportunity to subscribe therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same. [*32 Stat. L. 484.*]

ROBBERY.

See *LARCENY*, vol. 4, p. 789, and consult the *General Index*.

SAILING RULES.

See *COLLISIONS*, vol. 2, p. 150.

SAILORS.

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SEAL FISHERIES.

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SEALS.

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CROSS-REFERENCES.

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Custody of Seals, see *STATE DEPARTMENT*.
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Sec. 6. [*Seal defined.*] In all cases where a seal is necessary by law to any commission, process, or other instrument provided for by the laws of Congress, it shall be lawful to affix the proper seal by making an impression therewith directly on the paper to which such seal is necessary; which shall be as valid as if made on wax or other adhesive substance. [*R. S.*]

Act of May 31, 1854, ch. 60, 10 Stat. L. 297.

Sec. 330. [*Seal of Comptroller of the Currency.*] The seal devised by the Comptroller of the Currency for his office, and approved by the Secretary of the Treasury, shall continue to be the seal of office of the Comptroller, and may be renewed when necessary. A description of the seal, with an impression thereof, and a certificate of approval by the Secretary of the Treasury, shall be filed in the Office of the Secretary of State. [*R. S.*]

Act of June 3, 1864, ch. 106, 13 Stat. L. 100.

This section was amended by the Act of

Feb. 18, 1875, ch. 80, 18 Stat. L. 317, by adding the closing sentence beginning with the words "A description of the seal," etc.

Sec. 353. [*Seal of the Department of Justice.*] The seal heretofore provided for the office of the Attorney-General shall be, with such change as the President shall approve, the seal of the Department of Justice. [R. S.]

Act of March 5, 1872, ch. 30, 17 Stat. L. 35.

Sec. 395. [*Seal of the Post-office Department.*] The Postmaster-General shall keep the seal heretofore adopted for his Department, which shall be affixed to all commissions of postmasters and others, and used to authenticate all transcripts and copies which may be required from his Department. [R. S.]

Act of June 8, 1872, ch. 335, 17 Stat. L. 285.

Sec. 454. [*Custody of seal of General Land Office.*] The Commissioner of the General Land-Office shall retain the charge of the seal heretofore adopted for the office, which may continue to be used, and of the records, books, papers, and other property appertaining to the Office. [R. S.]

Act of April 25, 1812, ch. 68, 2 Stat. L. 717.

Sec. 478. [*Seal of the Patent Office.*] The seal heretofore provided for the Patent-Office shall be the seal of the Office, with which letters-patent and papers issued from the Office shall be authenticated. [R. S.]

Act of July 8, 1870, ch. 230, 16 Stat. L. 200.

Sec. 1050. [*Seal of Court of Claims.*] The Court of Claims shall have a seal, with such device as it may order. [R. S.]

Act of March 3, 1863, ch. 92, 12 Stat. L. 766.

Sec. 1793. [*Seal of the United States.*] The seal heretofore used by the United States in Congress assembled is declared to be the seal of the United States. [R. S.]

Act of Sept. 15, 1789, ch. 14, 1 Stat. L. 68.

Sec. 1794. [*Secretary of State to keep and use the seal.*] The Secretary of State shall keep such seal, and shall make out and record, and shall affix the same to, all civil commissions for officers of the United States, to be appointed by the President, by and with the advice and consent of the Senate, or by the President alone. But the seal shall not be affixed to any commission before the same has been signed by the President of the United States, nor to any other instrument, without the special warrant of the President therefor. [R. S.]

Act of Sept. 15, 1789, ch. 14, 1 Stat. L. 68.
See also similar provisions of R. S. sec. 203 under STATE DEPARTMENT.

Nature of secretary's duty.—The commission being signed, the subsequent duty of the secretary of state is prescribed by law, and not to be guided by the will of the President. He is to affix the seal of the United States to the commission, and is to record it. This is not a proceeding which may be varied if the judgment of the executive shall suggest one more eligible; but is a precise course accurately marked out by law, and is to be strictly pursued. It is the duty of the secretary of state to conform to law, and in this he is an officer of the

United States, bound to obey the laws. He acts, in this respect, under the authority of law, and not by the instructions of the President. It is a ministerial act which the law enjoins on a particular officer for a particular purpose. *Marbury v. Madison*, (1803) 1 Cranch (U. S.) 137.

The signature is a warrant for affixing the great seal to a commission; and the great seal is only to be affixed to an instrument which is complete. It attests, by an act supposed to be of public notoriety, the verity of the presidential signature. *Marbury v. Madison*, (1803) 1 Cranch (U. S.) 137.

When seal is to be affixed.—The seal is never to be affixed till the commission is

signed, because the signature which gives force and effect to the commission is conclusive evidence that the appointment is made. *Marbury v. Madison*, (1803) 1 Cranch (U. S.) 137.

Effect of fixing seal. — When the seal is affixed the appointment is made, and the

commission is valid. No other solemnity is required by law; no other act is to be performed on the part of the government. *Marbury v. Madison*, (1803) 1 Cranch (U. S.) 137.

Commissions of postmasters. — See *POSTAL SERVICE*, vol. 5, p. 793.

[*Seal of Department of Agriculture.*] The Secretary of Agriculture is hereby authorized and directed to procure a proper seal, with such suitable inscriptions and devices as he may approve, to be known as the official seal of the Department of Agriculture, and to be kept and used to verify official documents, under such rules and regulations as he may prescribe. [*28 Stat. L. 272.*]

This is from the Department of Agriculture Appropriation Act of Aug. 8, 1894, ch. 238.

SEC. 31. [*Seal of Census Office.*] That the Director of the Census shall provide the Census Office with a seal containing such device as he may select, and he shall file a description of such seal with an impression thereof in the office of the Secretary of State. Such seal shall remain in the custody of the Director of the Census, and shall be affixed to all certificates and attestations that may be required from the Census Office. [*30 Stat. L. 1021.*]

This is from the Act of March 3, 1899, ch. 419, "An Act To provide for taking the Twelfth and subsequent censuses."

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SHIPPING AND NAVIGATION; STEAM VESSELS.

[I. SHIPPING COMMISSIONERS.]

Sec. 4501. [*Appointment of shipping commissioners — receipts and expenses — reports — auditing — compensation — clerks — fees.*] The Secretary of the Treasury shall appoint a commissioner for each port of entry, which is also a port of ocean navigation, and which, in his judgment, may require the same; such commissioner to be termed a shipping commissioner, and may, from time to time, remove from office any such commissioner whom he may have reason to believe does not properly perform his duty, and shall then provide for the proper performance of his duties until another person is duly appointed in his place: *Provided*, That Shipping Commissioners now in office shall continue to perform the duties thereof until others shall be appointed in their places. Shipping Commissioners shall monthly render a full, exact, and itemized account of their receipts and expenditures to the Secretary of the Treasury, who shall determine their compensation, and shall from time to time determine the number and compensation of the clerks appointed by such commissioner, with the approval of the Secretary of the Treasury, subject to the limitations now fixed by law. The Secretary of the Treasury shall regulate the mode of conducting business in the shipping offices to be established by the shipping commissioners as hereinafter provided, and shall have full and complete control over the same, subject to the provisions herein contained; and all expenditures by shipping commissioners shall be audited and adjusted in the Treasury Department in the mode and manner provided for expenditures in the collection of customs. All fees of Shipping Commissioners shall be paid into the Treasury of the United States and shall constitute a fund which shall be used under the direction of the Secretary of the Treasury to pay the compensation of said Commissioners and their clerks and such other expenses as he may find necessary to ensure the proper administration of their duties. [R. S.]

This section was amended "so as to read as" above by the Act of June 26, 1884, ch. 121, sec. 27, 23 Stat. L. 59. Originally it read as follows:

"Sec. 4501. The several circuit courts within the jurisdiction of which there is a port of entry which is also a port of ocean navigation, shall appoint a commissioner for

each such port which in their judgment may require the same, such commissioners to be termed shipping-commissioners; and may, from time to time, remove from office any commissioner whom the court may have reason to believe does not properly perform his duties, and shall then provide for the proper performance of his duties until another person is duly appointed in his place. Such courts shall regulate the mode of conducting business in the shipping-offices to be established by the shipping-commissioners as hereinafter provided; and shall have full and complete control over the same, subject to the provisions herein contained." Act of June 7, 1872, ch. 322, 17 Stat. L. 262.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *infra*, p. 850.

Collection of fees abolished, disposition thereof, and payment of shipping commissioners. See Act of June 19, 1886, ch. 421, sec. 1, given under SHIPPING AND NAVIGATION.

Sections 4501-4612 constitute title 53 of the Revised Statutes, entitled "Merchant Seamen."

Sections 4501-4508 constitute chapter 1, entitled "Shipping Commissioners."

Sections 4509-4523 constitute chapter 2, entitled "Shipment."

Sections 4524-4548 constitute chapter 3, entitled "Wages and Effects."

Sections 4549-4563 constitute chapter 4, entitled "Discharge."

Sections 4564-4591 constitute chapter 5, entitled "Protection and Relief."

Sections 4592-4595 constitute chapter 6, entitled "Fees of Shipping Commissioners."

Sections 4596-4612 constitute chapter 7, entitled "Offenses and Punishments."

Coasting vessels.—The Act providing for the appointment of shipping commissioners does not apply to the shipping of seamen upon vessels engaged only in and for voyages coastwise between the Atlantic ports. *U. S. v. Smith*, (1877) 95 U. S. 536.

Foreign vessels.—This section could not include in its operation foreign ships. The very title of the Act of June 7, 1872, limits the action of the shipping commissioners to a superintendence of the shipment on ships belonging to the United States. *The Montapedia*, (1882) 14 Fed. Rep. 427.

The internal structure of the statute also shows that it was intended to operate only upon the manner of shipping crews upon our own vessels. *The Montapedia*, (1882) 14 Fed. Rep. 427.

Effect of later Acts.—The Act of June 19, 1886, ch. 421, sec. 1, did not repeal the provisions of this section as respects expenditures by shipping commissioners other than for clerks. There is no repealing clause, there is no reference to such expenditures nor any implication of any intention to impose the burden of maintaining suitable premises for the transaction upon the commissioner, and the commissioner is not required under the Act of 1886 to pay out of his compensation expenses of the office which before that Act were paid by the government. *U. S. v. Reed*, (1897) 167 U. S. 664, *affirm-*

ing (C. C. A. 1894) 69 Fed. Rep. 841, (C. C. A. 1894) 61 Fed. Rep. 414.

Expenses incidental to office.—Where a statute which renders an expenditure a necessary incident to an office does not expressly, or by clear implication, provide that it shall be paid by the incumbent of the office, out of his compensation, it is a proper charge against the United States. *U. S. v. Reed*, (C. C. A. 1894) 61 Fed. Rep. 414, *affirmed* (1897) 167 U. S. 664.

The compensation of the commissioner of the port of New York was fixed by the secretary of the treasury under the provisions of this section at four thousand dollars per annum and one-half the net surplus of fees collected, less salaries and expenses paid, the compensation being limited, however, to the sum of five thousand dollars in any one year. Subsequently, under the provisions of the Act of June 19, 1886, section 1, the commissioner was allowed and paid five thousand dollars as salary. It was held that the commissioner was not required to pay from such compensation the incidental expenses of the office, such as rent and clerk hire. *U. S. v. Reed*, (1897) 167 U. S. 664, *affirming* (C. C. A. 1894) 61 Fed. Rep. 414, (C. C. A. 1894) 69 Fed. Rep. 841.

Expenses of clerk hire.—But where the shipping commissioner had been formally notified by the secretary of the treasury that his compensation would be limited to one hundred dollars per month and that no additional compensation would be allowed, and when his vouchers were presented, including the item of clerk hire, the secretary approved them only for one hundred dollars per month, with the indorsement, "the services enumerated appear to have been necessarily rendered," under the provisions of the Act of June 19, 1886, section 1, it was held that the shipping commissioner could not recover anything additional as compensation for clerk hire. *U. S. v. Gunnison*, (1894) 155 U. S. 389, *reversing* (1891) 26 Ct. Cl. 382.

Early cases on subject of compensation. See *In re Shipping Com'rs*, (1876) 13 Blatchf. (U. S.) 339, 21 Fed. Cas. No. 12,792.

Merchant seamen "are simply seamen in private vessels as distinguished from seamen in the navy or public vessels." *Deady, J.*, in *U. S. v. Sullivan*, (1890) 43 Fed. Rep. 604.

"Master and crew" defined.—Wherever in a statute the words "master and crew" occur in connection with each other, the word "crew" embraces all the officers as well as the common seamen. *U. S. v. Winn*, (1838) 3 Sumn. (U. S.) 209, 28 Fed. Cas. No. 16,740.

Domestic vessels.—The Act for the regulation of seamen exclusively applies to seamen engaged in the merchant service of the United States. *Grant v. U. S.*, (C. C. A. 1893) 58 Fed. Rep. 694; *U. S. v. Minges*, (1883) 16 Fed. Rep. 657; *The Montapedia*, (1882) 14 Fed. Rep. 427; *U. S. v. Kellum*, (1881) 7 Fed. Rep. 843; *Ex p. D'Olivera*, (1813) 1 Gall. (U. S.) 474. *Contra, U. S. v. Sullivan*, (1890) 43 Fed. Rep. 602; *U. S. v. McArdle*, (1873) 2 Sawy. (U. S.) 367;

U. S. v. Anderson, (1872) 10 Blatchf. (U. S.) 226.

Title 53 of the Revised Statutes has been

held inapplicable to the employment of seamen on foreign vessels. U. S. v. Kellum, (1881) 7 Fed. Rep. 843.

Sec. 4502. [*Bond and oath of commissioner.*] Every shipping-commissioner so appointed shall give bond to the United States, conditioned for the faithful performance of the duties of his office, for a sum, in the discretion of the circuit judge, of not less than five thousand dollars, with two good and sufficient sureties therefor, to be approved by such judge; and shall take and subscribe the following oath before entering upon the duties of his office: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and that I will truly and faithfully discharge the duties of a shipping-commissioner to the best of my ability, and according to law." Such oath shall be indorsed on the commission or certificate of appointment, and signed by him, and certified by the officer before whom such oath shall have been taken. [*R. S.*]

Act of June 7, 1872, ch. 322, 17 Stat. L. 262.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *infra*, p. 850.

Sec. 4503. [*When officers of the customs shall act as commissioners.*] In any port in which no shipping-commissioner shall have been appointed, the whole or any part of the business of a shipping-commissioner shall be conducted by the collector or deputy collector of customs of such port; and in respect of such business such custom-house shall be deemed a shipping-office, and the collector or deputy collector of customs to whom such business shall be committed, shall, for all purposes, be deemed a shipping-commissioner within the meaning of this Title. [*R. S.*]

Act of June 7, 1872, ch. 322, 17 Stat. L. 263.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *infra*, p. 850.

Sec. 4504. [*Penalty for unlawfully acting as commissioner.*] Any person other than a commissioner under this Title, who shall perform or attempt to perform, either directly or indirectly, the duties which are by this Title set forth as pertaining to a shipping-commissioner, shall be liable to a penalty of not more than five hundred dollars. Nothing in this Title, however, shall prevent the owner, or consignee, or master of any vessel except vessels bound from a port in the United States to any foreign port, other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the republic of Mexico, and vessels of the burden of seventy-five tons or upward bound from a port on the Atlantic to a port on the Pacific, or vice versa, from performing, himself, so far as his vessel is concerned, the duties of shipping-commissioner under this Title. Whenever the master of any vessel shall engage his crew, or any part of the same, in any collection-district where no shipping-commissioner shall have been appointed, he may perform for himself the duties of such commissioner. [*R. S.*]

Act of June 7, 1872, ch. 322, 17 Stat. L. 263; Act of Jan. 15, 1873, ch. 35, 17 Stat. L. 410.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *infra*, p. 850.

Master as shipping commissioner.—The discharge of a mariner employed on a vessel engaged in a voyage to "the West Indies and return" need not be signed in the

presence of the shipping commissioner. *Burton v. Frye*, (1885) 139 Mass. 131.

This section authorizes the master, owner, or consignee of a ship about to make a voyage not mentioned in section 4511 to be his own shipping commissioner; and this provision is not affected by sections 4512-4515. *The Grace Lothrop*, (1874) Holmes (U. S.) 342 10 Fed. Cas. No. 5,653, *affirmed* in (1877) 95 U. S. 527.

Third person as shipping commissioner.—Coastwise voyages not being within the operation of section 4511, the agreement is not required to be signed in the presence of such a commissioner. Instead of that, the owner, or consignee, or the master of the ship, so far as the ship is concerned, may himself, in such a case, perform the duties of such a commissioner, but third persons

possess no such authority in any case. *U. S. v. Smith*, (1877) 95 U. S. 536.

Defense to suit for penalty.—A person when sued for the penalty for shipping seamen without authority must show himself within the exception of the Act of June 9, 1874. It is not incumbent on the plaintiff to negative the existence of the exculpatory facts. *U. S. v. Rose*, (1882) 12 Fed. Rep. 576.

Sec. 4505. [Clerks of commissioner.] Any shipping-commissioner may engage clerks to assist him in the transaction of the business of the shipping-office, at his own proper cost, and may, in case of necessity, depute such clerks to act for him in his official capacity; but the shipping-commissioner shall be held responsible for the acts of every such clerk or deputy, and will be personally liable for any penalties such clerk or deputy may incur by the violation of any of the provisions of this Title; and all acts done by a clerk, as such deputy, shall be as valid and binding as if done by the shipping-commissioner. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 262. See, however, R. S. sec. 4501, as amended, *supra*.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *infra*, p. 850.

Deputy commissioners.—The shipping commissioner has the power to appoint clerks with the title of deputy commissioners. *In re Shipping Com'r*, (1879) 16 Blatchf. (U. S.) 92, 21 Fed. Cas. No. 12,793.

Sec. 4506. [Seal of commissioner.] Each shipping-commissioner shall provide a seal with which he shall authenticate all his official acts, on which seal shall be engraved the arms of the United States, and the name of the port or district for which he is commissioned. Any instrument, either printed or written, purporting to be the official act of a shipping-commissioner, and purporting to be under the seal and signature of such shipping-commissioner, shall be received as presumptive evidence of the official character of such instrument, and of the truth of the facts therein set forth. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 262.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *infra*, p. 850.

Sec. 4507. [Office of commissioners.] The Secretary of the Treasury shall assign in public buildings or otherwise procure suitable offices and rooms for the shipment and discharge of seamen, to be known as shipping commissioners' offices, and shall procure furniture, stationery, printing, and other requisites for the transaction of the business of such offices. [R. S.]

This section was amended to read as above by the Act of March 3, 1897, ch. 389, sec. 1, 29 Stat. L. 687.

The section originally read as follows:

"Sec. 4507. Every shipping-commissioner shall lease, rent, or procure, at his own cost, suitable premises for the transaction of business, and for the preservation of the books and other documents connected therewith;

and these premises shall be styled the shipping-commissioner's office." Act of June 7, 1872, ch. 322, 17 Stat. L. 263.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *infra*, p. 850.

Expenses.—See notes to R. S. sec. 4501, *supra*.

Sec. 4508. [Duties of commissioner.] The general duties of a shipping-commissioner shall be:

First. To afford facilities for engaging seamen by keeping a register of their names and characters.

Second. To superintend their engagement and discharge, in manner prescribed by law.

Third. To provide means for securing the presence on board at the proper times of men who are so engaged.

Fourth. To facilitate the making of apprenticeships to the sea service.

Fifth. To perform such other duties relating to merchant seamen or merchant ships as are new or may hereafter be required by law. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 260, note thereunder, and provisions following, *infra*.
263.

For exceptions, see Act of June 9, 1874, ch.

An act in reference to the operations of the Shipping Commissioners' Act, approved June seventh eighteen hundred and seventy-two.

[Act of June 9, 1874, ch. 260, 18 Stat. L. 64.]

[*Vessels in coastwise trade, with certain exceptions, exempt from provisions of shipping commissioners' act.*] That none of the provisions of an act entitled "An act to authorize the appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen" shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise, or voyage. [18 Stat. L. 64.]

The provisions of the Shipping Commissioners' Act of June 7, 1872, ch. 322, 17 Stat. L. 262, are incorporated into the Revised Statutes as sections 2174, 4290-4292, 4501-4520, 4523-4529, 4531-4536, 4538-4545, 4549-4555, 4565-4572, 4592-4597, 4599-4600, 4602-4607, 4609, 4610, 4612. For further provisions on this subject, superseding in part the provisions in the text, see the provisions in the text following.

Effect of Act.—"This language is so broad and comprehensive that its effect must be to strike from the Revised Statutes every provision therein which was taken from the Act of 1872 relative to such coastwise vessels; and their operation must be restricted to vessels sailing on long foreign voyages, or from the Atlantic to the Pacific coasts. All the regulations found in the Act of 1872 and transferred to the Revised Statutes relative to the shipment of crews, which might otherwise, perhaps, be applicable to coastwise voyages, are no longer in force." U. S. v. Bain, (1880) 5 Fed. Rep. 192. But see following text.

Fishing and whaling voyages.—The effect of this Act is to take fishing and whaling voyages, where the seamen receive as their compensation a share or lay in the catchings, wholly out of the operation of the Act of June 7, 1872. *Ross v. Bourne*, (1883) 14 Fed. Rep. 858, citing *Scott v. Rose*, (1874) 2 Lowell (U. S.) 381, 21 Fed. Cas. No. 12,545; *U. S. v. Bain*, (1880) 5 Fed. Rep. 192; *Eddy v. O'Hara*, (1882) 132 Mass. 756.

Fees of commissioner.—It was held under this Act that a shipping commissioner has no authority to ship seamen on "sail or steam vessels engaged in the coastwise trade" unless such vessels come within the exceptions named therein; nor will the consent of the master and seamen operate to give such authority. He should not receive fees for shipping seamen on coasting vessels not within said exceptions. Anything received by a shipping commissioner for such service is not required to be accounted for by the terms of R. S. sec. 4501. (1884) 18 Op. Atty-Gen. 54. But see following text.

SEC. 2. [*Shipping and discharging crews in coast trade, etc.—fees.*] That shipping commissioners may ship and discharge crews for any vessel engaged in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel, the shipping

and discharging fees in such cases to be one-half that prescribed by section forty-six hundred and twelve of the Revised Statutes, for the purpose of determining the compensation of shipping commissioners. [24 Stat. L. 80.]

This is from the Act of June 19, 1886, ch. 421, "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes."

Collection of fees abolished.—See section 1 of the above Act, given under SHIPPING AND NAVIGATION.

Effect as to offenses.—See notes to R. S. sec. 4596, *infra*, div. VII.

Section not mandatory.—It is to be observed that this Act is not mandatory and did not require seamen to ship before a shipping commissioner. However, it was deemed advisable that if the master or crew, from motives of convenience or otherwise, should desire to ship before a shipping commissioner, they should be able to do so; and it was for this reason that the authority of

the shipping commissioner was thus enlarged. The J. D. Peters, (1896) 78 Fed. Rep. 368.

Coastwise trade defined.—The words "any vessel engaged in the coastwise trade," as used in this section, include vessels engaged in the carrying trade on navigable rivers, and are not to be limited to vessels engaged in the carrying trade along the sea-coast. *Ravesies v. U. S.*, (1889) 37 Fed. Rep. 447, *reversing* (1888) 35 Fed. Rep. 917.

Vessels engaged in making voyages in the inland river trade, from and to points exclusively within the state of Alabama, for the transportation of merchandise and other subjects of trade and commerce between the state of Alabama and other states of the United States, are engaged in the coastwise trade within the meaning of this section. *Ravesies v. U. S.*, (1889) 37 Fed. Rep. 447, *reversing* (1888) 35 Fed. Rep. 917.

An act to amend the laws relative to shipping commissioners.

[Act of Aug. 19, 1890, ch. 801, 26 Stat. L. 320.]

[*Shipping crews for vessels in coastwise trade, etc. — agreements — discharge — wages — clothing exempt from attachment.*] When a crew is shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico, as authorized by section two of an Act approved June nineteenth, eighteen hundred and eighty-six, entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," an agreement shall be made with each seaman engaged as one of such crew in the same manner as is provided by Sections four thousand five hundred and eleven and four thousand five hundred and twelve of the Revised Statutes, not however including the sixth, and eighth items of Section four thousand five hundred and eleven; and such agreement shall be posted as provided in Section four thousand five hundred and nineteen, and such seamen shall be discharged and receive their wages as provided by the first clause of Section four thousand five hundred and twenty-nine and also by Sections four thousand five hundred and twenty-six, four thousand five hundred and twenty-seven, four thousand five hundred and twenty-eight, four thousand five hundred and thirty, four thousand five hundred and thirty-five, four thousand five hundred and thirty-six, four thousand five hundred and forty-two, four thousand five hundred and forty-three, four thousand five hundred and forty-four, four thousand five hundred and forty-five, four thousand five hundred and forty-six, four thousand five hundred and forty-seven, four thousand five hundred and forty-nine, four thousand five hundred and fifty, four thousand five hundred and fifty-one, four thousand five hundred and fifty-two, four thousand five hundred and fifty-three, four thousand five hundred and fifty-four, and four thousand six hundred and two of the Revised Statutes; but in all other respects such shipment of seamen and such shipping agreement shall be regarded as if both shipment and agreement had been entered into between the master of a vessel and a seaman without going before

a shipping commissioner: *Provided*, That the clothing of any seaman shall be exempt from attachment, and that any person who shall detain such clothing when demanded by the owner shall be liable to a penalty of not exceeding one hundred dollars." [28 Stat. L. 667, 29 Stat. L. 689.]

This statute was amended to read as above by the Act of Feb. 18, 1895, ch. 97, 28 Stat. L. 667, as amended by the Act of March 3, 1897, ch. 389, sec. 8, 29 Stat. L. 689.

The statute originally read as follows:

"That when a crew is shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or Mexico, as authorized by section two of an act approved June nineteenth, eighteen hundred and eighty-six, entitled an act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes, an agreement shall be made with each seaman engaged as one of such crew, in the same manner and form as is provided by sections forty-five hundred and eleven and forty-five hundred and twelve of the Revised Statutes for the shipment of the crews of other vessels; and the provisions of sections forty-five hundred and twenty-two, forty-five hundred and twenty-four, forty-five hundred and twenty-five, forty-five hundred and twenty-six, forty-five hundred and twenty-seven, forty-five hundred and twenty-eight, forty-five hundred and fifty-four, forty-five hundred and ninety-six, forty-five hundred and ninety-seven, forty-five hundred and ninety-eight, forty-five hundred and ninety-nine, forty-six hundred and one, forty-six hundred and two, forty-six hundred and three, forty-six hundred and four, forty-six hundred and five, forty-six hundred and ten, and forty-six hundred and twelve of the Revised Statutes shall extend to and embrace such vessels

in the coastwise trade and the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or Mexico, where their crews have been shipped by a shipping commissioner, to the same extent and with the same force and effect as if said vessels had been mentioned and embraced in the language and terms of said sections." [26 Stat. L. 320.]

The amendment of March 3, 1897, ch. 389, struck out the word "seventh" following the words "not however including the sixth" in the text, and added the words "and four thousand six hundred and two" following the words "four thousand five hundred and fifty-four" as set out above.

So much of the Act of Feb. 18, 1895, ch. 97, being the section given in the text, "as relates to allotment" is repealed by the Act of Dec. 21, 1898, ch. 28, sec. 25, *infra*, p. 870.

Effect as to offenses.—See notes to R. S. sec. 4596, *infra*, div. VII.

Effect as to amendment of R. S. sec. 4511. See notes to such section.

Contracts with seamen.—The last clause of this section prior to the proviso preserves to master and seamen the right to enter into such contractual relations not otherwise provided by the sections of the Revised Statutes made applicable to seamen shipping in the coastwise trade, and not contrary to law. The J. D. Peters, (1896) 78 Fed. Rep. 368.

Detention of clothing.—A civil action and not an information in a criminal case is the proper proceeding to recover a penalty for violating the provision as to the detention of seamen's clothing. U. S. v. Younger, (1899) 92 Fed. Rep. 672.

[II. SHIPMENT.]

Sec. 4509. [Apprentices.] Every shipping-commissioner appointed under this Title shall, if applied to for the purpose of apprenticing boys to the sea-service, by any master or owner of a vessel, or by any person legally qualified, give such assistance as is in his power for facilitating the making of such apprenticeships; but the shipping-commissioner shall ascertain that the boy has voluntarily consented to be bound, and that the parents or guardian of such boy have consented to such apprenticeship, and that he has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom such boy is to be bound is a proper person for the purpose. Such apprenticeship shall terminate when the apprentice becomes eighteen years of age. The shipping-commissioner shall keep a register of all indentures of apprenticeship made before him. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 263.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4510. [*Indenture of apprentice to be produced to commissioner.*]

The master of every foreign-going vessel shall, before carrying any apprentice to sea from any place in the United States, cause such apprentice to appear before the shipping-commissioner before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof, if any; and the name of the apprentice, with the date of the indenture and of the assignment or assignments thereof, if any, shall be entered on the agreement; which shall be in the form as near as may be given in the table marked "A" in the schedule annexed to this Title; and no such assignment shall be made without the approval of a commissioner, of the apprentice, and of his parents or his guardian. For any violation of this section, the master shall be liable to a penalty of not more than one hundred dollars. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 264.

260, note thereunder, and provisions following, *supra*, p. 850.

For exceptions, see Act of June 9, 1874, ch.

Sec. 4511. [*Shipping articles.*]

The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the republic of Mexico, or of any vessel of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned; and every such agreement shall be, as near as may be, in the form given in the table marked A, in the schedule annexed to this Title, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars:

First. The nature and, as far as practicable, the duration of the intended voyage or engagement, and the port or country at which the voyage is to terminate.

Second. The number and description of the crew, specifying their respective employments.

Third. The time at which each seaman is to be on board, to begin work.

Fourth. The capacity in which each seaman is to serve.

Fifth. The amount of wages which each seaman is to receive.

Sixth. A scale of the provisions which are to be furnished to each seaman.

Seventh. Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which may be sanctioned by Congress or authorized by the Secretary of the Treasury not contrary to or not otherwise provided for by law, which the parties agree to adopt.

Eighth. Any stipulations in reference to advance and allotment of wages, or other matters not contrary to law. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 264; Act of Jan. 15, 1873, ch. 35, 17 Stat. L. 410.

This section was amended by the Act of March 3, 1897, ch. 389, sec. 19, 29 Stat. L. 691, by substituting in paragraph seventh the words "or authorized by the Secretary of the Treasury not contrary to or not otherwise provided for by law," for the words "as proper to be adopted, and" appearing in the

section as originally enacted, the amendment taking effect July 1, 1897.

Subdivision 8 of this section "in so far as the same relates to the domestic trade as defined in section 19 of" the Act of Dec. 21, 1898, ch. 28, is repealed by section 25 of such Act. See *infra*, p. 870.

This section with the exception of the sixth and eighth items thereof, and R. S. sec. 4512, are applicable to crews "shipped by a ship-

ping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by Act of Aug. 19, 1890, ch. 801, *supra*, p. 851. For decisions prior to this Act, see *U. S. v. The Grace Lothrop*, (1877) 95 U. S. 527; *U. S. v. Smith*, (1877) 95 U. S. 536.

For exceptions, see Act of June 9, 1874, c. 1. 260, note thereunder, and provisions following, *supra*, p. 850.

What voyages excepted.—This section does not apply to vessels bound for the West Indies, Mexico, and British North America. *Smith v. Chase*, (1876) 2 Hask. (U. S.) 106, 22 Fed. Cas. No. 13,023.

Coasting voyage.—A vessel engaged in a coastwise voyage from one Atlantic port to another on our coast does not fall within the operation of the section. *U. S. v. Smith*, (1877) 95 U. S. 536.

Extension of section.—The provisions of this section have been made applicable to contracts for shipping crews for American vessels in the coastwise trade and between the United States and Canada. *The Occidental*, (1898) 87 Fed. Rep. 485. See also *The Lillian*, (1904) 131 Fed. Rep. 375.

In writing.—The maritime law requires that contracts touching the service of seamen should be in writing. *Smith v. Chase*, (1876) 2 Hask. (U. S.) 106, 22 Fed. Cas. No. 13,023.

Filling in blanks.—The failure to insert in shipping articles before they are executed the time at which each seaman is to be on board to commence work cannot be justified by a custom not to make a memorandum of the time until it is definitely fixed after the execution of the article, and in the meantime leave a blank space to be filled in by the master on sailing. This is a violation of law, as the articles constitute a contract, and it is not competent for the master to fill in blank spaces after the signing of the seamen and bind the seamen thereto. *Bark Shetland v. Johnson*, (1903) 21 App. Cas. (D. C.) 416.

Time of making articles.—We have no law requiring the master to make his contract with the seamen before receiving them on board his vessel; in both sorts of voyage, foreign and domestic, the command is to make the contract before proceeding on the voyage. *U. S. v. The Thomas W. Haven*, (1880) 3 Fed. Rep. 347.

Voyage must be specified.—It is the intention of law to prohibit the shipment of seamen without their consent; and to make it appear that the seamen have consented to enter the service of the vessel for a voyage or for a specified term, it is essential, and the law requires, that the shipping articles specify clearly the nature of the intended voyage. *The Occidental*, (1900) 101 Fed. Rep. 997.

A voyage is sufficiently described where it is set forth in the shipping articles as "from the port of San Francisco, Cal., to any port or ports on Puget Sound or British Columbia for orders. At Puget Sound or

British Columbia vessel may be ordered to load cargo for any port or ports in Alaska as the master may direct. If the vessel is ordered to Alaska, the trips between Puget Sound or British Columbia and Alaska to be repeated one or more times; thence to San Francisco for final discharge, either direct or via one or more ports on the Pacific coast, for a term of time not exceeding six months." *The Occidental*, (1898) 87 Fed. Rep. 485.

Shipping articles are not so defective under the law as to be void where they describe the voyage in the following words: "To ports in the district of Alaska within the Behring sea and Arctic ocean, and also other ports and places in any part of the world, as the master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding six calendar months." *The Mermaid*, (C. C. A. 1902) 115 Fed. Rep. 13, *reversing* (1900) 104 Fed. Rep. 301.

Shipping articles are sufficiently definite where they describe a voyage as "from the port of San Francisco, Cal., to San Francisco, Cal., to Puget Sound; thence to San Diego or any other port on the Pacific coast of the United States; thence to Puget Sound or Shoal Water bay again, or to any other port or ports on the Pacific coast of the United States; thence to San Francisco, Cal., for final discharge and as directed by the master." *The Roy Somers*, (1900) 107 Fed. Rep. 750.

Voyage and term.—A contract contained in the shipping articles, providing for a term of service and not merely for service upon a specified voyage, describing the terms as "from the port of Tacoma to Honolulu, H. I., and back to San Francisco, Cal., as a final port of discharge, either direct or via one or more ports on the Pacific coast, for a term of time not exceeding nine calendar months," fairly and fully meets the requirements of this section. *The C. F. Sargent*, (1899) 95 Fed. Rep. 180.

Definiteness.—Shipping articles described the voyage to be from Boston to one or more ports south, thence to one or more ports in Europe, and back to a port of discharge in the United States. It was held that the description was sufficiently certain to bind the parties to the performance of the voyage. *Thompson v. The Oakland*, (1841) 4 Law. Rep. 349, 23 Fed. Cas. No. 13,971.

A description of the voyage in the articles as being "from the port of Boston to Valparaiso, and other ports in the Pacific ocean, at and from thence home, direct, or via ports in the East Indies or Europe," is not sufficient. *Snow v. Wope*, (1855) 2 Curt. (U. S.) 301, 22 Fed. Cas. No. 13,149, *affirming* (1855) 1 Sprague (U. S.) 300, 30 Fed. Cas. No. 18,042.

Discretionary voyages.—The captain may lawfully hire a crew to proceed in a vessel from one port of the United States to another, and then to a foreign port and return to the port of discharge, via a number of intermediate ports, but the law does not permit such duplicity in shipping contracts where by the specified terms of the shipping

articles the master is given full control to take the vessel and her crew on a long voyage to one or more foreign ports, or make a short run to a nearby domestic port and return to the port of discharge. The *Occidental*, (1900) 101 Fed. Rep. 997.

Discretion to touch at other ports.—It was not the intention of Congress in enacting the statute to require owners of sailing vessels engaged in the coastwise trade to specify at the inception of each voyage all the ports at which the vessel might touch or to deprive the master of the power to exercise a reasonable discretion in touching at other convenient ports and availing himself of the opportunities afforded by the exigencies of trade. If such had been the intention of the statute it would undoubtedly have been expressed in terms. All that is exacted is that the nature of the intended voyage be described. The *Mermaid*, (C. C. A. 1902) 115 Fed. Rep. 13, reversing (1900) 104 Fed. Rep. 301.

Deviation.—Where San Francisco, by the terms of the contract, was the port of final discharge, and the vessel was to go there from Port Hadlock either directly or by one or more ports to the Pacific coast, the words "via one or more ports of the Pacific coast" did not authorize the vessel to sail by San Francisco to a port not intermediate between Port Hadlock and San Francisco but several hundred miles to the south of the latter port and then return or make a second voyage to Port Hadlock. The *J. M. Griffith*, (1895) 71 Fed. Rep. 317.

A parol understanding that the vessel was not to complete the voyage described in the shipping articles is not admissible. *Thompson v. The Oakland*, (1841) 4 Law. Rep. 349, 23 Fed. Cas. No. 13,971.

Substitution of vessel.—A Chinese crew that shipped at Hong Kong on a vessel belonging to a company chartered under the laws of the United States for a trip to San Francisco and return by the same vessel, or any other vessel belonging to that company, which crew, owing to an accident to the ship, was brought to San Francisco on a vessel belonging to a different company, may be transferred to another vessel, substituted for the one injured, after having duly signed for that service before a United States shipping commissioner. (1902) 24 Op. Atty-Gen. 111.

Time when service begins.—Shipping articles not stipulating the time when service shall begin are valid, and the service is to commence in a reasonable time, and parol evidence is competent to show what that would be. *Smith v. Chase*, (1876) 2 Hask. (U. S.) 106, 22 Fed. Cas. No. 13,023.

Where the shipping articles do not specify the precise hour of the day at which a seaman is to be on board to commence work, it is the duty of the court to adopt that construction of the shipping articles which is most favorable to the seaman. If it is the desire of the owner or master to have the seaman become bound to go on board to begin work at some particular hour of a day named, the shipping articles should so state.

If, through negligence or design, the articles executed do not make such special provision, the court is not authorized by construction to supply such omission, and hold that a seaman who reports himself ready for duty on the day named in the articles, and several hours before the time appointed for the departure of the vessel, has forfeited his rights under the articles because he did not appear at an earlier hour of the day. The *Alice Blanchard*, (1899) 92 Fed. Rep. 519.

See also notes to R. S. secs. 4511, 4520, 4524, 4530, 4596.

Wages.—Shipping articles entered into for a whaling voyage, and contemplating the payment of the officers and crew by "lays" or shares in the vessel's earnings, contained a stipulation that either of the officers or crew who might be prevented by any cause from performing their duty during the whole of the voyage should receive of his lay only in proportion that the time served by him should be to the whole time of the voyage. It was held that this stipulation would be sustained, even without evidence that special explanation of it was made to the seaman. The *Atlantic*, (1849) Abb. Adm. 451, 2 Fed. Cas. No. 620.

As a general rule, seamen are competent to bind themselves by a contract with the master and owners; and in the ordinary case of a hiring for money wages at a specified rate, the contract of the seamen in respect to the rate will be upheld. The *Atlantic*, (1849) Abb. Adm. 451, 2 Fed. Cas. No. 620.

The contract of a seaman in respect to his compensation will likewise be upheld where the mode of compensation contemplated is by a proportional division of the earnings of the vessel among the owners, officers, and crew. The *Atlantic*, (1849) Abb. Adm. 451, 2 Fed. Cas. No. 620.

Advances and allotments.—The purpose of this section "was to provide what the shipping articles or agreement should contain, and the section was imperative in its demands that it should state, among other things, 'any stipulations in reference to advance and allotment of wages, or other matters not contrary to law.' Obviously, it simply related to the form and contents of the shipping agreement. It did not purport to provide what the law should be with reference to the several particulars required to be stated in the shipping agreement." The *J. D. Peters*, (1896) 78 Fed. Rep. 368.

Forfeitures.—In so far as articles provide for a forfeiture of wages in excess of that provided by law for the same offense, it is contrary to law, and not in conformity with section 4511. The *San Marcos*, (1886) 27 Fed. Rep. 567.

Parol evidence.—The well-established rule of common law, viz., that a written instrument cannot be varied by parol, has been abrogated with regard to seamen, though remaining in full force as against the shipowner. The *Triton*, (1832) Blatchf. & H. Adm. 282, 24 Fed. Cas. No. 14,181; The *Exchange*, (1833) Blatchf. & H. Adm. 366, 8 Fed. Cas. No. 4,594; The *Cypress*, (1829) 1 Blatchf. & H. Adm. 83, 6 Fed. Cas. No. 3,550.

A mariner may allege and prove that the shipping articles do not truly describe the voyage for which he was shipped, and may recover wages upon the ground that the voyage for which he contracted was different in length from that described in the articles, and that he was wrongfully discharged at the expiration of the voyage specified in the articles; and a mate is within the same rule. *Page v. Sheffield*, (1855) 2 Curt. (U. S.) 377, 18 Fed. Cas. No. 10,667.

Effect of later Acts. — It is evident from a consideration of the various statutes, that in providing in the Act of Feb. 18, 1895, that items 6, 7, and 8 should be omitted from

section 4511, R. S., in its applicability to the shipping agreement, Congress deemed section 4511, R. S., so far as items 6, 7, and 8 were concerned, obsolete, unnecessary, and superfluous legislation. *The J. D. Peters*, (1896) 78 Fed. Rep. 368.

Congress in providing (by Act of Aug. 19, 1890, ch. 801, as amended) for the omission of item No. 8 of R. S. sec. 4511 in its application to the form and contents of the shipping agreement in the coastwise trade, did not repeal the positive enactments permitting allotments contained in the Acts of 1884 and 1886. (See *supra*, p. 851.) *The J. D. Peters*, (1896) 78 Fed. Rep. 368.

SEC. 19. [Voyage or term for which seaman may be shipped — reshipment.] That a master of a vessel in the foreign trade may engage a seaman at any port in the United States, in the manner provided by law, to serve on a voyage to any port, or for the round trip from and to the port of departure, or for a definite time, whatever the destination. The master of a vessel making regular and stated trips between the United States and a foreign country may engage a seaman for one or more round trips, or for a definite time, or on the return of said vessel to the United States may reship such seaman for another voyage in the same vessel, in the manner provided by law, without the payment of additional fees to any officer for such reshipment or re-engagement. [*23 Stat. L. 58.*]

This is from the Act of June 26, 1884, ch. 121, "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes."

Reshipment defined. — A reshipment is an agreement to continue or the continuance of the relation theretofore existing between the seamen and the vessel, without any interruption in that relation by a discharge and release. This may be by the mutual agreement between seaman and master at or before the expiration of the original term of service, and it may be evidenced by an indorsement to that effect on the original shipping articles, or new articles may be signed, at the option of the parties. But it

is a continuing by the seamen in the service of the vessel when there has been no interruption in that service by a discharge. It does not apply to a case in which each of the members of the crew shipped had been duly and formally discharged and released before the shipping commissioner. *Ravesies v. U. S.*, (1888) 35 Fed. Rep. 917. See also note to R. S. sec. 4513.

Coastwise voyage. — Neither this section nor R. S. sec. 4501 applies to the case of a shipment of seamen on vessels engaged in the coastwise trade under Act of June 19, 1886, ch. 421, sec. 2, though the shipment was made on the same vessel from which the seamen had been previously discharged. *Ravesies v. U. S.*, (1888) 35 Fed. Rep. 919.

Sec. 4512. [Rules for shipping articles.] The following rules shall be observed with respect to agreements:

First. Every agreement, except such as are otherwise specially provided for, shall be signed by each seaman in the presence of a shipping-commissioner.

Second. When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping-commissioner, and the other part shall contain a special place or form for the description and signatures of persons engaged subsequently to the first departure of the ship, and shall be delivered to the master.

Third. Every agreement entered into before a shipping-commissioner shall be acknowledged and certified under the hand and official seal of such commissioner. The certificate of acknowledgment shall be indorsed on or annexed to the agreement; and shall be in the following form:

"State of ———, County of ———:

"On this _____ day of _____, personally appeared before me, a shipping-commissioner in and for the said county, A. B., C. D., and E. F., severally known to me to be the same persons who executed the foregoing instrument, who each for himself acknowledged to me that he had read or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same; and that, while sober and not in a state of intoxication, he signed it freely and voluntarily, for the uses and purposes therein mentioned." [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 265.

See note under R. S. sec. 4511, *supra*.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Scope of section.—Section 4512 requiring agreements of seamen to be signed in the presence of the shipping commissioner refers only to the agreements mentioned in section 4511. The Grace Lothrop, (1874) Holmes (U. S.) 342, 10 Fed. Cas. No. 5,653, *affirmed* (1877) 95 U. S. 527.

In the year 1873 a steamship bound from

New York to the West Indies and Mexico caused a crew to be shipped for that voyage by written shipping articles executed on board the ship before a notary public, and not before a shipping commissioner. It was held that that was in violation of Act of June 7, 1872, sec. 13 (R. S. 4512), and that the ship had incurred the penalty provided by sec. 14 (R. S. 4514). The Steamship City of Mexico, (1873) 7 Ben. (U. S.) 31, 5 Fed. Cas. No. 2,756, *affirmed* in (1874) 11 Blatchf. (U. S.) 489, 25 Fed. Cas. No. 14,797.

Sec. 4513. [*Exception as to shipping articles.*] The section forty-five hundred and eleven shall not apply to masters of vessels where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage, nor to masters of coastwise nor to masters of lake-going vessels that touch at foreign ports; but seamen may, by agreement, serve on board such vessels a definite time, or, on the return of any vessel to a port in the United States, may reship and sail in the same vessel on another voyage, without the payment of additional fees to the shipping-commissioner, by either the seamen or the master. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 264.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 252, by striking out the words "preceding section" appearing in the section as originally enacted, and inserting in lieu thereof the words "section forty-five hundred and eleven," as above given.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Reshipment.—The exemption from payment of fees on the reshipment is not limited to the reshipment for one other voyage and to that immediately following the one at which the fees were paid. The exemption applies to a reshipment for all voyages succeeding the first one in regular order. Young v. Steamship Co., (1881) 105 U. S. 41.

Sec. 4514. [*Penalty for shipping without agreement.*] If any person shall be carried to sea, as one of the crew on board of any vessel making a voyage as hereinbefore specified, without entering into an agreement with the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than two hundred dollars. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely personated himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 265.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4515. [*Penalty for knowingly shipping seamen without articles.*] If any master, mate, or other officer of a vessel knowingly receives, or accepts,

to be entered on board of any merchant-vessel, any seaman who has been engaged or supplied contrary to the provisions of this Title, the vessel on board of which such seaman shall be found shall, for every such seaman, be liable to a penalty of not more than two hundred dollars. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 265.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following *supra*, p. 850.

Voyages not covered by section 4511.—The clause which provides for penalty for receiving to be entered on board a merchant ship any seaman engaged or supplied contrary to the provisions of the title, does not refer to seamen who have agreed to make a voyage not mentioned in section 4511 and have not signed the agreement in the presence of a shipping commissioner. The Grace Lothrop, (1874) Holmes (U. S.) 342, 10 Fed. Cas. No. 5,653, *affirmed* (1877) 95 U. S. 527.

Coasting voyages.—This section being placed at the end of the provisions concerning foreign voyages, if it can mean anything, means to punish a breach of those provisions, as if it read, seamen engaged or supplied contrary to the provisions hereinbefore made. The subject of coasting voyages is taken up later, and distinct penalties are provided in section 4521, which

deals with that subject. U. S. v. The Thomas W. Haven, (1880) 3 Fed. Rep. 347.

Time of engaging seaman.—Any hiring of a seaman may be called engaging him, and he is engaged when he is contracted with. The word has that meaning in some parts of our shipping Acts and in some parts of the Merchant Shipping Act. It cannot have it in section 4515, because the statutes provide that the written contract or "engagement" in that broad sense is to be made at any time before the vessel proceeds to sea; therefore, no oral engagement can be illegal until the last moment has elapsed in which a written engagement must be made, which is the moment before the anchor is weighed. U. S. v. The Thomas W. Haven, (1880) 3 Fed. Rep. 347.

The offense of receiving on board ship a seaman who has been engaged contrary to title 53 is an impossible one, because there is nothing in that title which requires an engagement to be made before the seamen are received on board. U. S. v. The Thomas W. Haven, (1880) 3 Fed. Rep. 347.

Sec. 4516. [*Lost seamen may be replaced.*] In case of desertion or casualty resulting in the loss of one or more seamen, the master must ship, if obtainable, a number equal to the number of those whose services he has been deprived of by desertion or casualty, who must be of the same grade or rating and equally expert with those whose place or position they refill, and report the same to the United States consul at the first port at which he shall arrive, without incurring the penalty prescribed by the two preceding sections. [R. S.]

This section was amended "so as to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 1, 30 Stat. L. 755, *infra*, p. 869.

The section originally read as follows:

"Sec. 4516. In case of desertion, or of casualty resulting in the loss of one or more seamen, the master may ship a number equal to the number of whose services he has been deprived by desertion or casualty, and report the same to the United States consul at the first port at which he shall arrive, without incurring the penalty prescribed by the two preceding sections." Act of June 7, 1872, ch. 322, 17 Stat. L. 265.

Section 26 of the amendatory Act above noted provides that sec. 1, which contains the amendment in the text, "shall not apply to fishing or whaling vessels or yachts." See *infra*, p. 870.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following *supra*, p. 850.

Effect of failure to replace.—The fact that a master did not replace a second mate who had been paid off at an intermediate port does not excuse the crew's total refusal to work, and the master is justified in putting them in irons for such refusal. The Cora F. Cressey, (1904) 131 Fed. Rep. 144.

Seaman of lower grade.—Where a seaman became ill and was discharged and another shipped in his place, and thereafter the other seamen deserted, claiming that the substitute was not an able seaman, they were not justified in so doing, and the defense of desertion should be sustained against their libel of the vessel for wages, where such new man, although not of the same grade as the others, was an ordinary seaman and able to work acceptably to the master. The Moonlight, (1903) 125 Fed. Rep. 429.

Sec. 4517. [*Shipping seamen in foreign ports.*] Every master of a merchant-vessel who engages any seaman at a place out of the United States, in which there is a consular officer or commercial agent, shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage seamen

in his presence; and the rules governing the engagement of seamen before a shipping-commissioner in the United States, shall apply to such engagements made before a consular officer or commercial agent; and upon every such engagement the consular officer or commercial agent shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise duly made. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 260, note thereunder, and provisions following, *supra*, p. 850.

For exceptions, see Act of June 9, 1874, ch. 265.

Sec. 4518. [*Penalty for violating preceding section.*] Every master who engages any seaman in any place in which there is a consular officer or commercial agent, otherwise than as required by the preceding section, shall incur a penalty of not more than one hundred dollars, for which penalty the vessel shall be held liable. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 260, note thereunder, and provisions following, *supra*, p. 850.

For exceptions, see Act of June 9, 1874, ch. 265.

SEC. 20. [*Voyage or term of seamen shipped in foreign port — reshipment — bond for return.*] That every master of a vessel in the foreign trade may engage any seaman at any port out of the United States, in the manner provided by law, to serve for one or more round trips from and to the port of departure, or for a definite time, whatever the destination; and the master of a vessel clearing from a port of the United States with one or more seamen engaged in a foreign port as herein provided shall not be required to reship in a port of the United States the seamen so engaged, or to give bond, as required by section forty-five hundred and seventy-six of the Revised Statutes, to produce said seamen before a boarding officer on the return of said vessel to the United States. [23 Stat. L. 58.]

This is from the Act of June 26, 1884, ch. 121, "An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes."

Sec. 4519. [*Posting copy of agreement.*] The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew; and on default shall be liable to a penalty of not more than one hundred dollars. [R. S.]

Act of July 7, 1872, ch. 322, 17 Stat. L. 266. the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by Act of Aug. 19, 1890, ch. 801, *supra*, p. 851.

This section is applicable to crews "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4520. [*Shipping articles for vessels in coasting trade.*] Every master of any vessel of the burden of fifty tons or upward, bound from a port in one State to a port in any other than an adjoining State, except vessels of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement in writing or in print, with every seaman on board such vessel except such as shall be apprentice or servant to himself or owners, declaring the voyage or term of time for which such seaman shall be shipped. [R. S.]

Act of July 20, 1790, ch. 29, 1 Stat. L. 131; Act of June 7, 1872, ch. 322, 17 Stat. L. 264.

For exceptions, see Act of June 9, 1874, ch. 160, note thereunder, and provisions following. *supra*, p. 850.

Effect of later Acts.—The provisions of this section and those of the following section were not repealed by the Act of June 9, 1874, and are still in force. The *Lizzie M. Dunn*, (1887) 30 Fed. Rep. 927; *U. S. v. Bain*, (1880) 5 Fed. Rep. 192.

River navigation.—The provisions of this section and section 4523 are applicable to seamen or boats engaged in navigating the Monongahela and Ohio rivers. The *Pacific*, (1885) 23 Fed. Rep. 154.

Lake navigation.—The provisions of the law requiring shipping articles apply to lake navigation. The *Theodore Perry*, (1878) 24 Int. Rev. Rec. 54, 23 Fed. Cas. No. 13,880; *Wolverton v. Lacey*, (1856) 18 Law. Rep. 672, 30 Fed. Cas. No. 17,932.

"Adjoining states."—Illinois and Michigan are "adjoining states" within the meaning of this statute. The boundary line is the middle of Lake Michigan. *Thorson v. Peterson*, (1881) 9 Fed. Rep. 517.

Judicial notice of location of port.—The court is bound to take notice of the legally established boundaries of the different states. *Thorson v. Peterson*, (1881) 9 Fed. Rep. 517.

New York to Mexico.—The master of a vessel making a voyage from New York to a port in Mexico is required by section 4520 to make the agreement therein required, and is also required to see that such agreement is signed, acknowledged, and certified before a shipping commissioner. Such vessel is liable to the penalty provided if her master receives a seaman on board who had been engaged otherwise than under an agreement

so signed, acknowledged, and certified. *U. S. v. The Steamship City of Mexico*, (1874) 11 Blatchf. (U. S.) 489, 25 Fed. Cas. No. 14,797, *affirming* (1873) 7 Ben. (U. S.) 31, 5 Fed. Cas. No. 2,756.

Time of signing articles.—The articles must be signed before leaving the port of departure, and if not so signed, the shipment is void by the express language of section 4523. The *Theodore Perry*, (1878) 24 Int. Rev. Rec. 54, 23 Fed. Cas. No. 13,880.

Duress.—If the articles are signed under duress they are invalid. *Mayshaw v. Terry*, (1861) 1 Sprague (U. S.) 584, 16 Fed. Cas. No. 9,361; *Stratton v. Babbage*, (1855) 18 Law. Rep. 94, 23 Fed. Cas. No. 13,527.

Seaman defined.—The wife of a cook on board a vessel, engaged as second cook, is a part of the crew, and it is the duty of the master to make an agreement reduced to writing and signed by her as provided herein. The *James H. Shrigley*, (1892) 50 Fed. Rep. 287.

Description of voyage.—Articles describing a voyage as from Philadelphia to Portland, thence to one or more ports east, if required, and back to a western port of discharge, the term not to exceed two months, were sufficiently precise and definite to be obligatory upon the parties. *U. S. v. Bain*, (1880) 5 Fed. Rep. 192.

Collateral attack on articles.—Shipping articles are required to be signed under this section; and though their correctness may be attacked, and they may be shown by parol to be incorrect, fraudulent, or void, unless this be satisfactorily established the seamen will be held bound by the terms prescribed in them. There must be such clear and satisfactory proof of either fraud or mistake to justify the court in disregarding them. The *Elvine*, (1884) 19 Fed. Rep. 528.

Sec. 4521. [*Penalty for shipping without articles.*] If any master of such vessel of the burden of fifty tons or upward shall carry out any seaman or mariner, except apprentices or servants, without such contract or agreement being first made and signed by the seamen, such master shall pay to every such seaman the highest price or wages which shall have been given at the port or place where such seaman was shipped, for a similar voyage, within three months next before the time of such shipping, if such seaman shall perform such voyage; or if not, then for such time as he shall continue to do duty on board such vessel; and shall moreover be liable to a penalty of twenty dollars for every such seaman, recoverable, one-half to the use of the person prosecuting for the same, and the other half to the use of the United States. Any seaman who has not signed such a contract shall not be bound by the regulations nor subject to the penalties and forfeitures contained in this Title. [*R. S.*]

Act of July 20, 1790, ch. 29, 1 Stat. L. 131.

See also R. S. sec. 4523 and cases there given.

To what voyages applicable.—The Act of 1790 allowing to seamen shipped without a contract in writing the highest wages, notwithstanding any parol contract, is confined to cases of vessels bound on a foreign voyage or to a domestic port other than that of an

adjoining state. It does not extend to the trade between ports of the same state, nor with ports of an adjoining state, nor can it be made to reach an ordinary fishing voyage without doing violence to the language of interpolating words which the legislature have not seen fit to use. The *Ianthe*, (1856) 3 Ware (U. S.) 126, 12 Fed. Cas. No. 6,992.

The intention of this statute is to make it to the interest of the owner of the boat to make a written or printed agreement with the seamen in order to avoid disputes as to the rate of wages, and the positive provisions of this statute cannot be affected by the equities of the case. *The Lud Keefer*, (1892) 49 Fed. Rep. 650.

Mariners are wards of the court, and as such are to be protected, not to the injury of the respondents, but to secure them their just wages. It is very easy for officers of vessels to engage mariners at a fixed rate, and if they do not do so the courts must allow them the highest rates existing at the time of departure. *Rollins v. Steamer E. O. Standard*, (1880) 4 Fed. Rep. 750.

Rights of seamen.—Where seamen go on board a vessel voluntarily, not having signed the shipping articles, they are not bound to continue in the service of the vessel during the voyage, nor for any definite term, but the master can require them to do work necessary to be done in the proper navigation of the vessel while she is at sea. Such seamen are free to leave the vessel at any place, and having served as mariners they are entitled to receive compensation therefor, but not having any valid contract entitling them to be returned to a certain port, they have no just claim for expenses in so doing, nor for any compensation except wages while they were doing the work required of them. *The Occidental*, (1900) 101 Fed. Rep. 997. To the same effect, *Graham v. The Exporter*, (1875) 21 Int. Rev.

Rec. 110, 10 Fed. Cas. No. 5,667; *The Ianthe*, (1856) 3 Ware (U. S.) 126, 12 Fed. Cas. No. 6,992; *The Australia*, (1859) 3 Ware (U. S.) 240, 2 Fed. Cas. No. 667.

Election to prove agreement.—Where no wages are stipulated in shipping articles, a seaman may either prove by parol evidence what wages were agreed to be given, or may under the statute claim the highest rate payable at the port of shipment within the three months next preceding the date of the articles. *The Warrington*, (1832) Blatchf. & H. Adm. 335, 29 Fed. Cas. No. 17,208; *Graham v. The Exporter*, (1875) 21 Int. Rev. Rec. 110, 10 Fed. Cas. No. 5,667.

Where two distinct contracts for service on two distinct voyages are made at the same time, and one only is reduced to writing, the other may be proved by parol. *Page v. Sheffield*, (1855) 2 Curt. (U. S.) 377, 18 Fed. Cas. No. 10,667.

Libel.—Though it be assumed that a pilot of a steam vessel who is a licensed and sworn officer is a seaman within the meaning of this section and the previous one, whose hiring must be by shipping articles, yet these sections have no application to a steamboat libeled for wages by pilots under this section, where the libel does not allege, nor is any proof adduced tending to show, that the steamboat was a "vessel of the burden of fifty tons or upwards," and the libelants are in no position to claim the benefits of this statute. *The Lud Keefer*, (1892) 49 Fed. Rep. 650.

Sec. 4522. [*Penalty for omitting to begin voyage.*] At the foot of every such contract to ship upon such a vessel of the burden of fifty tons or upward there shall be a memorandum in writing of the day and the hour when such seaman who shipped and subscribed shall render himself on board to begin the voyage agreed upon. If any seaman shall neglect to render himself on board the vessel for which he has shipped at the time mentioned in such memorandum without giving twenty-four hours' notice of his inability to do so, and if the master of the vessel shall, on the day in which such neglect happened, make an entry in the log book of such vessel of the name of such seaman, and shall in like manner note the time that he so neglected to render himself after the time appointed, then every such seaman shall forfeit for every hour which he shall so neglect to render himself one-half of one day's pay, according to the rate of wages agreed upon, to be deducted out of the wages. If any such seaman shall wholly neglect to render himself on board of such vessel, or having rendered himself on board shall afterwards desert, he shall forfeit all of his wages or emoluments which he has then earned. [*R. S.*]

This section was amended "so as to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 2, 30 Stat. L. 755, set forth, *infra*, p. 869.

The section originally read as follows:

"Sec. 4522. At the foot of every such contract to ship upon such a vessel of the burden of fifty tons or upward, there shall be a memorandum in writing of the day and the hour on which the seamen who ship and subscribe shall render themselves on board to begin the voyage agreed upon. If any

such seaman shall neglect to render himself on board the vessel, for which he has shipped, at the time mentioned in such memorandum, and if the master of the vessel shall, on the day on which such neglect happened, make an entry in the log-book of such vessel, of the name of such seaman, and shall in like manner note the time that he so neglected to render himself, after the time appointed, every such seaman shall forfeit for every hour which he shall so neglect to render himself, one day's pay, according

to the rate of wages agreed upon, to be deducted out of his wages. If any such seaman shall wholly neglect to render himself on board of such vessel, or having rendered himself on board, shall afterwards desert and escape, so that the vessel proceed to sea without him, he shall be liable to pay to the master, owner, or consignee of the vessel, a sum equal to that paid to him by advance at the time of signing the contract, over and besides the sum so advanced, both which sums shall be recoverable in any court, or before any justice of any State, city, town, or county within the United States, which, by the laws thereof, have cognizance of debts of equal value, against such seaman or mariner, or his surety or sureties, in case he shall have given surety to proceed the voyage." Act of July 20, 1790, ch. 29, 1 Stat. L. 131.

Sec. 4523. [Unlawful shipments void.] All shipments of seamen made contrary to the provisions of any act of Congress shall be void; and any seaman so shipped may leave the service at any time, and shall be entitled to recover the highest rate of wages of the port from which the seaman was shipped, or the sum agreed to be given him at his shipment. [R. S.]

Act of July 20, 1840, ch. 48, 5 Stat. L. 395; Act of June 7, 1872, ch. 322, 17 Stat. L. 265.

See also R. S. sec. 4521, *supra*, and notes.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

This section is declaratory of the general rule that legal rights cannot be founded upon unlawful contracts. *The Troop*, (1902) 117 Fed. Rep. 557.

Fishing vessels.—This section is not applicable to fishermen who ship under an oral agreement for a "lay" or shares in the catch. Fishermen are not seamen in the sense of this section. *The Cornelia M. Kingsland*, (1885) 25 Fed. Rep. 856.

Lake navigation.—This section applies to a seaman on a lake vessel, and where he shipped under a verbal agreement without signing shipping articles, he may leave the vessel at any time. *The City of Fremont*, (1871) 2 Biss. (U. S.) 415, 5 Fed. Cas. No. 2,746.

It is the duty of every master navigating the lakes to have his seamen sign shipping articles, specifying the ports or places at which his vessel trades, and the trip or season for which they are shipped, and the wages to be paid. In cases of such neglect every legal intentment will be taken against the master and owners. It is not the fault of the seaman that shipping articles are not signed, but of the master. *The City of Fremont*, (1871) 2 Biss. (U. S.) 415, 5 Fed. Cas. No. 2,746.

River navigation.—See note to R. S. sec. 4520.

Foreign vessels.—This section is applicable to seamen shipped in American ports on foreign vessels. *The Troop*, (1902) 117 Fed. Rep. 557.

Time of signing articles.—Shipping arti-

cles signed after the vessel has left her port of departure are not binding upon the seaman, and he may leave the vessel at any time without incurring the penalties of desertion. *The Theodore Perry*, (1878) 24 Int. Rev. Rec. 54, 23 Fed. Cas. No. 13,880. See also note to R. S. sec. 4520.

Right to leave service.—Where a seaman is hired without any shipping articles being signed he has the right to quit the boat at any time without being chargeable with desertion. *The Pacific*, (1885) 23 Fed. Rep. 154.

The imprisonment of a seaman for refusing to remain on board, where the shipping articles did not sufficiently describe the voyage, is a tort. *Snow v. Wope*, (1855) 2 Curt. (U. S.) 301, 22 Fed. Cas. No. 13,149, *affirming* (1855) 1 Sprague (U. S.) 300, 30 Fed. Cas. No. 18,042.

Election as to wages.—A vessel employed on the lakes between Chicago and the port of Sarnia, in Canada, having shipped a seaman on verbal promise of certain wages and no shipping articles having been signed, the seaman may leave the vessel at any time. But having drawn the full wages promised and not demanding more before leaving, the seaman cannot recover a larger amount. *The Fremont*, (1871) 9 Fed. Cas. No. 5,093; *The City of Fremont*, (1871) 2 Biss. (U. S.) 415, 5 Fed. Cas. No. 2,746.

Contract binding on vessel.—While a seaman shipped contrary to the provisions of this title may leave the service at any time, yet where he does continue or is ready to continue in the service of the vessel and is prevented by the master, he is to be paid either the wages agreed upon, or the highest pay to any seaman shipped for the voyage. The master cannot discharge him at will. *Page v. Sheffield*, (1855) 2 Curt. (U. S.) 377, 18 Fed. Cas. No. 10,667.

[III. WAGES AND EFFECTS.]

Sec. 4524. [*Commencement of wages.*] A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 268.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Contract as to commencement. — This section does not warrant a construction that takes from a seaman his right of contracting as to when he shall begin to claim his wages, so long as an agreement to that effect is reasonable and for the mutual benefit of

master and seaman. *The Lillian*, (1904) 131 Fed. Rep. 375.

Detention of vessel. — An agreement by the seamen not to claim wages if the vessel was detained or prevented from beginning her voyage by reason of ice is not unreasonable, and, if inserted with the knowledge and understanding of the seamen, it is a part of the contract and binding. *The Lillian*, (1904) 131 Fed. Rep. 375.

See also notes to R. S. sec. 4511, *supra*.

Sec. 4525. [*Wages not dependent on freight.*] No right to wages shall be dependent on the earning of freight by the vessel; but every seaman or apprentice who would be entitled to demand and receive any wages if the vessel on which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same of the master or owner in personam, notwithstanding that freight has not been earned. But in all cases of wreck or loss of vessel, proof that any seaman or apprentice has not exerted himself to the utmost to save the vessel, cargo, and stores, shall bar his claim. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 268.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

"Freight, mother of wages." — The rule, freight is the mother of wages, does not apply to a fishing or sealing voyage, and is abolished altogether by this section. *The Ocean Spray*, (1876) 4 Sawy. (U. S.) 105, 18 Fed. Cas. No. 10,412.

The principal object of this and the following section was to abolish the ancient rule of the sea which made the right of wages depend upon the earnings of freight by the vessel. *Brown v. Chandler*, (1877) 4 Fed. Cas. No. 1,998; *The Nippon's Crew*, (1849) Brun. Col. Cas. (U. S.) 577, 18 Fed. Cas. No. 10,277; *The Ocean Spray*, (1876) 4 Sawy. (U. S.) 105, 18 Fed. Cas. No. 10,412; *The Saratoga*, (1814) 2 Gall. (U. S.) 164, 21 Fed. Cas. No. 12,355.

Salvage services can be performed only by persons not bound by their legal duty to render them, and seamen are not allowed to become salvors, whatever may have been the perils or hardships or gallantry of their services in saving the ship or cargo, unless their connection with the ship is dissolved.

The C. F. Bielman, (1901) 108 Fed. Rep. 878; *Hobart v. Drogan*, (1836) 10 Pet. (U. S.) 108; *The C. P. Minch*, (C. C. A. 1896) 73 Fed. Rep. 859; *Cartwell v. The Ship John Taylor*, (1842) Newb. Adm. 341, 5 Fed. Cas. No. 2,482.

In the *C. P. Minch*, (C. C. A. 1896) 73 Fed. Rep. 859, *affirming* (1894) 61 Fed. Rep. 511, it was said by Lacombe, J., after an exhaustive review of the authorities, that "in every case where compensation in the nature of salvage has been awarded to seamen, the voyage has terminated by the shipwreck of the vessel, which has either gone to the bottom or left her bones on shore, or she has been abandoned by all, or by all except the salvors, under circumstances which show conclusively that the abandonment was absolute, without hope or expectation of recovery, or the seaman has been by the master unmistakably discharged from the service of the shipowner."

Promise of pay for salvage services. — If the master under such stress of circumstances promised the seamen better pay at the expense of the insurers the promise is unwarranted. *The C. F. Bielman*, (1901) 108 Fed. Rep. 878.

Sec. 4526. [*Termination of wages by loss of vessel — transportation to place of shipment.*] In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall

be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections forty-five hundred and seventy-seven, forty-five hundred and seventy-eight, and forty-five hundred and seventy-nine of the Revised Statutes of the United States. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 269.

This section was amended "so as to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 3, 30 Stat. L. 755, set forth, *infra*, p. 869. The amendment consists in the addition of all matter after the words "for any further period," and the change in the order of the words "wreck or loss," as they appeared in the section as originally enacted, to "loss or wreck," as given in the text.

By section 26 of the amendatory Act the amending section above noted "shall not apply to fishing or whaling vessels or yachts." See *infra*, p. 870.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Cause of loss.—If a vessel is lost to her owners without fault on their part, or if she is so injured by encountering ordinary perils of navigation as to be unfit to complete the particular voyage commenced, the terms of the statute are met, and the seamen receive all they can legally claim when they are paid wages at the contract rate for the time of actual service. *The Charles D. Lane*, (1901) 106 Fed. Rep. 746.

Fault of master.—If the stranding of the steamer was caused by the intoxication of the master, it was none the less a case of a termination of the seamen's service by reason of the wreck of the vessel within the meaning of this section. *Flanagan v. U. S.*, etc., *Mail Steamship Co.*, (1886) 30 Fed. Rep. 202.

Capture.—Where a vessel is captured and condemned, wages were due the seamen up to the date of condemnation. *Vandever v. Tilghman*, (1836) *Crabbe* (U. S.) 66, 28 Fed. Cas. No. 16,846.

A capture unless followed by condemnation does not dissolve the contract for mari-

ners' wages. During the prize proceedings it is suspended, and upon a decree of restoration it revives. *The Saratoga*, (1814) 2 Gall. (U. S.) 164, 21 Fed. Cas. No. 12,355.

A survey is not a necessary ingredient of wreck. *Flanagan v. U. S.*, etc., *Mail Steamship Co.*, (1886) 30 Fed. Rep. 202.

Time of termination.—In case of a wreck by stranding it must be left to the discretion of the master to fix the day of the actual termination of the seamen's services, and his decision will be supported unless some wrong or injustice be practiced on the seamen. *Flanagan v. U. S.*, etc., *Mail Steamship Co.*, (1886) 30 Fed. Rep. 202.

The seamen were bound to continue their service as long as there was any hope of saving the ship; and the master must be held to have the power, as a general rule, to determine whether there is any hope of getting the ship afloat, and until he gives it up, the owners cannot object to paying wages on the ground that there was no chance of saving the ship. *Tarleton v. Mallory*, (1878) 10 Ben. (U. S.) 46, 23 Fed. Cas. No. 13,753.

Navigation closed by ice.—Where a vessel on the Great Lakes is laid up at an intermediate point in a voyage by reason of the closing of navigation on account of winter, the contract of service with the seamen shipped for a single voyage is at an end and they are at liberty to abandon the voyage, and the vessel has the right to employ other seamen in the spring when navigation opens. But where on the close of navigation such seamen are discharged they are entitled to their wages up to the time of their discharge and to their expenses in returning to the place of departure, and also to their wages during the time occupied in the journey to such place of departure. *Boulton v. Moore*, (1883) 14 Fed. Rep. 922.

Time of payment.—A stipulation in the articles, that seamen shall not demand wages until the arrival of the vessel at her final port of destination, does not bar the seamen of their wages in case the vessel is lost before arriving at that port. *The Gen. Chamberlain*, (1872) 1 Hask. (U. S.) 432, 10 Fed. Cas. No. 5,310.

Sec. 4527. [*Wages in case of improper discharge.*] Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 266.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Coastwise voyages.—This section has been repealed so far as vessels engaged in the coastwise trade are concerned. *Dary v. The Caroline Miller*, (1888) 36 Fed. Rep. 507.

Where articles not signed.—Where seamen are engaged, but no shipping articles are signed and no services are rendered, they may not on their discharge recover as provided in this statute. *The Glenesslin*, (1899) 96 Fed. Rep. 768.

Justification for discharge.—Where seamen were insolent, lazy, and disobedient to orders, while their conduct did not amount to mutiny, it would have been full justification in the captain discharging them from the ship. *The Schooner Jefferson Borden*, (1881) 6 Fed. Rep. 301.

The master is not ordinarily justified in dissolving the contract with a seaman and discharging him for a single fault, unless it is of a highly aggravated character. The causes for which a seaman may be discharged are ordinarily such as amount to a disqualification, and show him to be an unsafe or an unfit man to have on board the vessel. *The Villa Y Herman*, (1900) 101 Fed. Rep. 132.

Lateness in tendering services.—Where the shipping articles do not specify the precise hour at which a seaman is to be on board to begin work, he substantially complies with his agreement in tendering his services on the day named in the articles, and the master is not justified in refusing to allow him to go to work even though he had directed him to be on board several hours earlier in that day. Such oral directions cannot be allowed to change the legal effect of the articles, and for such improper discharge the seaman may recover as provided in the above section. *The Alice Blanchard*, (1899) 92 Fed. Rep. 519.

A seaman who has signed articles and does not report for duty on board ship at the stipulated time, or if no time is stipulated, within a reasonable time, may be discharged from further service. *Smith v. Chase*, (1876) 2 Hask. (U. S.) 106, 22 Fed. Cas. No. 13,023.

Time when services commence.—See R. S. secs. 4511, 4524, and notes, *supra*, pp. 853, 863.

Disabling of vessel.—The provisions of this section are applicable to seamen who signed shipping articles for a voyage aboard a steamship and presented themselves on three successive days at the dock where the ship lay prepared to enter upon their work, but were discharged before the voyage began because of the disabling of the vessel by a break in a steampipe, and they are entitled to recover *in rem* wages for one month or so much thereof as the voyage would have

required. *The St. Paul*, (1897) 77 Fed. Rep. 998.

Unseaworthy vessel.—The provisions of this section are applicable to seamen shipping on vessels known by the owners to be unseaworthy and which were unable to proceed in pleasant weather and on a smooth sea and were compelled to return in a state of wreck. *The Staghound*, (1899) 97 Fed. Rep. 973.

Perils of seas.—Every contract of shipment made by seamen is made in view of the contingency of terminating the voyage by reason of encountering perils of navigation which all mariners understand may happen to any ship on any voyage, and when the contingency happens and the voyage is broken up without fault on the part of the captain or the ship, but wholly by force of the natural elements, it must be assumed that the contract is terminated in a manner contemplated and impliedly consented to by the parties, and the case does not come within the provisions of this section. *The Charles D. Lane*, (1901) 106 Fed. Rep. 746.

Waiver by new employment.—If it be assumed that this statute becomes immediately operative upon a seaman's discharge and that he became entitled to a month's wages, his right is one which he can waive for a sufficient consideration, and the acceptance of a new employment procured for him by the agents of the owners, which was in every respect equal to that from which he was discharged, must be regarded as a relinquishment of his right to resort to the statute. *The John R. Berrgen*, (1903) 122 Fed. Rep. 98.

Lien for wages.—Where services have not in fact been rendered, there can be no lien for wages except in the cases provided for in section 4527, where the shipping agreement has been signed and the seaman is thereafter unwarrantably discharged by the master. *The Glenesslin*, (1899) 96 Fed. Rep. 768.

Jurisdiction.—The provision for one month's extra pay for a wrongful discharge does not impose a penalty, but establishes a rule of damages for breach of contract, and a Circuit Court has jurisdiction of an action at common law to recover such compensation within R. S. sec. 4547. *Calvin v. Huntley*, (1901) 178 Mass. 31.

Burden of proof.—Where seamen libeling a vessel under the provisions of this section have shown the contract of shipping, their discharge having not only been shown, but admitted, and the libelants having for their part shown that their discharge was without their fault and against their consent, the burden is cast on the claimant to show that they were in fault and were discharged for good cause. *The Villa Y Herman*, (1900) 101 Fed. Rep. 133.

Sec. 4528. [*Suspension of wages.*] No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, after the time fixed by the agreement for him to begin work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offense committed by him. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 269.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Neglect to work.—In this section Congress evidently intended that no seaman neglecting to do his work should receive pay for that period. The Schooner *Jefferson Borden*, (1881) 6 Fed. Rep. 301.

Habitual drunkenness, if it goes to establish general incapacity to perform duty, is a

ground of forfeiture of wages, otherwise it goes only to diminish compensation for the voyage. *Orne v. Townsend*, (1827) 4 Mason (U. S.) 541, 18 Fed. Cas. No. 10,583.

Entries in the log book, showing that a seaman lost two days' work by intoxication and consequent illness, do not amount to satisfactory evidence of unlawful refusal or neglect to work when required, and a master is not justified in fining him twelve days' pay. (1898) 22 Op. Atty.-Gen. 212.

Sec. 4529. [Time for payment.] The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he shipped, or at the time such seaman is discharged, whichever first happens; and in the case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall, at the time of his discharge, be entitled to be paid, on account of wages, a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to one day's pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to the masters or owners of any vessel the seamen on which are entitled to share in the profits of the cruise or voyage. [R. S.]

This section was amended "so as to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 4, 30 Stat. L. 756, set forth, *infra*, p. 869.

The section originally read as follows:

SEC. 4529. The master or owner of every vessel making voyages from a port on the Atlantic to a port on the Pacific, or vice versa, shall pay to every seaman his wages, within two days after the termination of the agreement, or at the time such seaman is discharged, whichever first happens; and, in the case of vessels making foreign voyages, within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall, at the time of his discharge, be entitled to be paid, on account, a sum equal to one-fourth part of the balance due to him. Every master or owner who neglects or refuses to make payment in manner hereinbefore mentioned, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods; which sum shall be recoverable as wages in any claim made before the court. But this section shall not apply to the masters or owners of any vessel the seaman on which are entitled to share in the profits of the cruise or voyage." Act of July 20, 1790, ch. 29, 1 Stat. L. 133; Act of June 7, 1872, ch. 322, 17 Stat. L. 269.

It is provided by section 26 of the amend-

ing Act that section 4, above noted, "shall not apply to fishing or whaling vessels or yachts." See *infra*, p. 870.

The first clause of this section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *infra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Discharge on condemnation of vessel.—Where seamen are discharged by the master upon the condemnation of the vessel and are returned home by him, they are entitled to wages up to the time of their discharge, and if withheld the owners are liable to the penalty provided by this section. *Gallagher v. Murray*, (1879) 10 Ben. (U. S.) 290, 9 Fed. Cas. No. 5,193.

Leaving before term ended.—Where seamen are employed by the month and leave the service before the end of that time, without a sufficient cause, they may not recover the penalty fixed by this section for the neglect to pay their wages when due, without sufficient cause. *The Express*, (1904) 129 Fed. Rep. 655.

"Without sufficient cause."—The phrase "without sufficient cause" is to be construed as equivalent to "without reasonable cause," and there is reasonable cause for delay where

there is a dispute as to the legality under R. S. sec. 4536 of an order to pay wages to a third person, though such order is subsequently declared to be invalid as an assignment of wages made prior to the accruing thereof. The George W. Wells, (1902) 118 Fed. Rep. 761.

Dispute as to days.—A dispute as to the seaman's right to wages for the day on which he signed shipping articles at a distance from the vessel, he not having arrived on board until six P. M., where the question was submitted to the shipping commissioner, who decided in favor of the master, although such decision was erroneous, is a sufficient cause for delay within the meaning of this section. The Alice B. Phillips, (1901) 106 Fed. Rep. 956.

Want of funds.—The master of a vessel having fraudulently used her for his own purposes in violation of orders from her managing owner, and converted a large amount of her cargo to his own use, and the vessel owners having been under heavy expenses in recovering possession of the vessel and bringing her within reach of judicial process, so that all having claims against her might be protected, and in view and because of such facts not having sufficient funds to pay off the crew, it was held that this was a sufficient excuse for delay, within the meaning of the section. The Gen. McPherson, (1900) 100 Fed. Rep. 860.

Seamen cannot recover the penalty provided by this section for the nonpayment of wages then due them when the net proceeds from the sale of the vessel for unseaworthiness are insufficient to pay the officers and crew, and it does not appear that the master could have raised a sufficient sum for the purpose. The Wenonah, (1875) 1 Hask. (U. S.) 606, 29 Fed. Cas. No. 17,412.

Attachment against wages.—It is no excuse for a delay to pay wages that an attachment has been served upon the master, who was one of the owners of the vessel, in a suit brought against the seamen, for under R. S. sec. 4536 wages due a seaman cannot be attached, and a payment of wages to a seaman notwithstanding an attachment is valid. The Bark John E. Holbrook, (1874) 7 Ben. (U. S.) 356, 13 Fed. Cas. No. 7,339.

Fractions of days.—Seamen are entitled to wages for both the day on which they were

shipped and the day on which they were discharged, without regard to the hour. The Alice B. Phillips, (1901) 106 Fed. Rep. 956.

A seaman having signed shipping articles at Boston for service on board a vessel at Fall River was supplied with his railroad fare and arrived at the vessel at six P. M., the same day, and it was held that he was entitled to wages for that day. The Alice B. Phillips, (1901) 106 Fed. Rep. 956.

See also notes to R. S. secs. 4511, 4520, *supra*, pp. 853, 859.

Services under wrongful master.—The legal authority of a master to bind the ship by his contracts ceases when he unlawfully and piratically takes control of her adversely to her owners. The Gen. McPherson, (1900) 100 Fed. Rep. 860.

Services after piratical conversion by master.—A seaman is justified in staying by the vessel after a fraudulent deviation by the master and a conversion of the cargo to his own use, until such seaman arrives at the port of discharge, and can collect his wages for the entire period. The Gen. McPherson, (1900) 100 Fed. Rep. 860.

Immediate suit.—Where a vessel has fully discharged her cargo in her port of delivery and leaves that port on other voyages, without payment of wages, the seamen, although accompanying her, are entitled to an action for such wages immediately. The Edward, (1832) 1 Blatchf. & H. Adm. 286, 8 Fed. Cas. No. 4,289.

Wages on prior voyage.—So if she returns to the same port of delivery a seaman may institute an action at once for wages earned on the previous voyage, though the vessel be not discharged of her second cargo. The Edward, (1832) 1 Blatchf. & H. Adm. 286, 8 Fed. Cas. No. 4,289.

Premature filing of libel.—The provision for extra pay was designed as compensation for delay. The failure to wait before filing the libel for wages will not prevent its recovery where no one has been injured thereby. The Chas. L. Baylis, (1885) 25 Fed. Rep. 863.

See also secs. 4546, 4547, *infra*, p. 879 *et seq.*

Lien for extra pay.—The extra pay provided by statute is an incident to the claim for wages, and ranks with the claim for wages as a prior lien. The Chas. L. Baylis, (1885) 25 Fed. Rep. 863.

Sec. 4530. [*Payment of wages at ports, etc.*] Every seaman on a vessel of the United States shall be entitled to receive from the master of the vessel to which he belongs one-half part of the wages which shall be due him at every port where such vessel, after the voyage has commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract; and when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him as provided in section forty-five hundred and twenty-nine of the Revised Statutes. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 5. 30 Stat. L. 756, set forth *infra*, p. 869.

The section originally read as follows:

"SEC. 4530. Every seaman shall be en-

titled to receive from the master of the vessel to which he belongs, one-third part of the wages which shall be due to him at every port where such vessel shall unlade and deliver her cargo before the voyage is ended,

unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast is fully discharged at the last port of delivery, he shall be entitled to the wages which shall be then due." Act of July 20, 1790, ch. 29, 1 Stat. L. 133.

It is provided by section 26 of the amending Act that section 5, above set out, "shall not apply to fishing or whaling vessels or yachts." See *infra*, p. 870.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

Termination of voyage.—There must be some other act besides the discharge of the crew in order to effect a termination of the voyage at a port of refuge. *Schermacher v. Yates*, (1893) 57 Fed. Rep. 668.

The voyage is ended and a seaman's wages become due when the vessel is moored at her final port of destination, and if such wages are not paid within ten days thereafter, the seaman is entitled to admiralty process against the vessel. *The Annie M. Smull*, (1872) 2 Sawy. (U. S.) 226, 1 Fed. Cas. No. 423.

In *Granon v. Hartshorne*, (1834) Blatchf. & H. Adm. 454, 10 Fed. Cas. No. 5,689, it was held that when the ship had reached her port of final destination and was safely moored at the berth, that the voyage was then terminated and all sea services on board connected therewith.

Discharge of cargo not essential.—A seaman is not bound to stay by the ship after her arrival at the final port of destination, and assist in discharging her cargo, unless the shipping articles contain a contract to that effect or the established custom of the port requires it. *The Annie M. Smull*, (1872) 2 Sawy. (U. S.) 226, 1 Fed. Cas. No. 423.

After some conflict of opinion the clause in this section prior to the amendment, "and the cargo or ballast is fully discharged," has been construed by the courts as being applicable only "to those cases in which, either by express terms of the contract or by the established custom of the port, the crew are bound to stay by and unload the ship, and are actually retained in service for that purpose." But where there is no such contract or usage the wages become due on the day of the termination of the voyage—the seaman's discharge—and he is entitled to process against the vessel on the eleventh day thereafter; the ten days being computed from the termination of the voyage, when the wages become due without reference to the discharge of the cargo or ballast. *The Annie M. Smull*, (1872) 2 Sawy. (U. S.) 226, 1 Fed. Cas. No. 423.

Necessity of unlading of cargo.—Without the aid of an express stipulation, a seaman cannot sue for wages earned on a foreign voyage until the full completion of that

voyage by the unlading of the cargo or ballast. If the master or owner defers, beyond a reasonable time, to unload the vessel, such laches may be regarded equivalent to a discharge of the seaman. The burden of proof to show a discharge before the unlading of the cargo rests upon the seaman. His own oath is not sufficient evidence. *The Schooner Eagle*, (1846) Olc. Adm. 232, 8 Fed. Cas. No. 4,233.

Capture of vessel on return voyage.—The shipping articles provided for a voyage to "Surinam, and at and from thence back to the port of Philadelphia or to any port in Europe," and it was further agreed that no seaman "shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above-mentioned port of discharge in Philadelphia." It was held, where the vessel was captured after unloading a part of her cargo at a foreign port and while returning to Philadelphia with the residue, that the seamen were entitled to wages to the foreign port and for half the time the vessel stayed there. *Johnson v. Sims*, (1800) 1 Pet. Adm. 215, 13 Fed. Cas. No. 7,413.

Intermediate port for repairs.—A crew were shipped from New York to a port in Africa "and such other ports and places in any part of the world as the master may direct, and back to a final port of discharge in the United States." The vessel proceeded from New York to Sierra Leone and thence to Jamaica. On the way from the latter port for New York in ballast she was disabled and bore away for Key West, where the crew were discharged before a shipping commissioner and the wages paid at such time. After temporary repairs were made, she proceeded with the same ballast and without cargo to New York. It was held that New York and not Key West was her "final port of discharge," and the seamen having demanded passage money to such port were entitled to the same. *Schermacher v. Yates*, (1893) 57 Fed. Rep. 668.

Termination of voyage by deviation.—The announcement by the master of a vessel at an outward port after the cargo is finally discharged, that he intends to return to a port not authorized by the shipping articles, and a demand thereupon made by seamen for their wages, constitutes a termination of the voyage so far as such seamen are concerned and entitles them to an immediate payment of their wages, and the fact that the vessel is about to proceed to sea before the end of the ten days gives them the right to sue immediately under R. S. sec. 4547. *The Laura Madsen*, (1897) 84 Fed. Rep. 362.

Navigation suspended by ice.—In the case of *The Hudson*, (1881) 8 Fed. Rep. 167, where the libellants, without any written articles, shipped on board of a packet running between Pittsburgh and Cincinnati, on the Ohio river, and on the arrival of the packet at Pittsburgh, the river being frozen over and navigation by reason of ice having been suspended for eight days, were discharged, the court held that they were entitled to their wages up to the time of their return to the

place of shipment, as well as their expenses during their return. *Boulton v. Moore*, (1883) 14 Fed. Rep. 922.

Substitution of vessel.—Seamen were shipped at Boston for a voyage "to port or ports in Hayti one or more times, or other West India ports, and back to port or ports in the United States on this or any other vessel, term not to exceed six months." Upon their arrival at a port in Hayti they

were boarded on shore at the owner's expense and brought home in another vessel, their wages and all other expenses being paid to the time of their arrival at Boston. It was held that they were not entitled to two months' extra wages, as having been discharged abroad, for their discharge was at Boston. *Rogers v. Lewis*, (1868) 1 Lowell (U. S.) 297, 20 Fed. Cas. No. 12,014.

Secs. 4531–4534. [*Repealed.*]

These sections were as follows:

"SEC. 4531. [*Allotment of wages.*] All stipulations for the allotment of any part of the wages of a seaman, during his absence, which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made, and the persons to whom such payments are to be made." Act of June 7, 1872, ch. 322, 17 Stat. L. 266.

"SEC. 4532. [*Advances.*] No advance of wages shall be made, or advance security given to any person, but to the seaman himself, or to his wife or mother; and no advance of wages shall be made, or advance security given, unless the agreement contains a stipulation for the same, and an accurate statement of the amount thereof; and no advance wages or advance security shall be given to any seaman except in the presence of the shipping-commissioner." Act of June 7, 1872, ch. 322, 17 Stat. L. 266.

For cases construing this section, see *Duncan v. Shaw*, (1884) 19 Fed. Rep. 521.

"SEC. 4533. [*Recovery in case of unlawful advance.*] If any advance of wages is made or advance security given to any seaman in any such manner as to constitute a breach of any of the provisions of the two preceding sections, the wages of such seaman shall be recoverable by him, as if no such advance had been made or promised; and in the case of any advance security so given, no person shall be sued thereon, unless he was a party to such breach." Act of June 7, 1872, ch. 322, 17 Stat. L. 266.

For cases construing this section, see

Smith v. Pendergast, (1882) 22 Fed. Cas. No. 13,090a.

"SEC. 4534. [*Discount of advance security.*] Whenever any advance security is discounted for any seaman, such seaman shall sign or set his mark to a receipt indorsed on the security, stating the sum actually paid or accounted for to him by the person discounting the same; and if the seaman sails in the vessel from the port of departure mentioned in the security, and is then duly earning his wages, or is previously discharged with the consent of the master, but not otherwise, the person discounting the security may, ten days after the final departure of the vessel from the port of departure mentioned in the security, sue for and recover the amount promised by the security, with costs, either from the owner or from any agent who has drawn or authorized the drawing of the security; and in any such proceeding it shall be sufficient for such person to prove that the security was given by the owner or master, or some other authorized agent, and that the same was discounted to and receipted by the seaman; and the seaman shall be presumed to have sailed in the vessel from such port, and to be duly earning his wages, unless the contrary is proved." Act of June 7, 1872, ch. 322, 17 Stat. L. 266.

For cases construing this section, see *Duncan v. Shaw*, (1884) 19 Fed. Rep. 521; *Smith v. Pendergast*, (1882) 22 Fed. Cas. No. 13,090a; *Greefe v. Cortis*, (1882) 13 Fed. Rep. 299.

These sections were expressly repealed by the Act of Dec. 21, 1898, ch. 28, sec. 25, 30 Stat. L. 764, set forth below.

An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce.

[Act of Dec. 21, 1898, ch. 28, 30 Stat. L. 755.]

SEC. 1. [*Amends R. S. sec. 4516.* See *supra*, p. 858.]

SEC. 2. [*Amends R. S. sec. 4522.* See *supra*, p. 861.]

SEC. 3. [*Amends R. S. sec. 4526.* See *supra*, p. 863.]

SEC. 4. [*Amends R. S. sec. 4529.* See *supra*, p. 866.]

SEC. 5. [*Amends R. S. sec. 4530.* See *supra*, p. 867.]

SEC. 6. [*Amends R. S. sec. 4547.* See *infra*, p. 879.]

- SEC. 7. [*Amends R. S. sec. 4556. See infra, p. 887.*]
 SEC. 8. [*Amends R. S. sec. 4557. See infra, p. 888.*]
 SEC. 9. [*Amends R. S. sec. 4558. See infra, p. 889.*]
 SEC. 10. [*Amends R. S. sec. 4559. See infra, p. 889.*]
 SEC. 11. [*Amends R. S. sec. 4561. See infra, p. 890.*]
 SEC. 12. [*Amends R. S. sec. 4564. See infra, p. 891.*]
 SEC. 13. [*Amends R. S. sec. 4566. See infra, p. 892.*]
 SEC. 14. [*Amends R. S. sec. 4568. See infra, p. 893.*]
 SEC. 15. [*Amends R. S. sec. 4572. See infra, p. 897.*]
 SEC. 16. [*Amends R. S. sec. 4581. See infra, p. 904.*]
 SEC. 17. [*Amends R. S. sec. 4582. See infra, p. 905.*]
 SEC. 18. [*Amends R. S. sec. 4583. See infra, p. 906.*]
 SEC. 19. [*Amends R. S. sec. 4596. See infra, p. 910.*]
 SEC. 20. [*Amends R. S. sec. 4597. See infra, p. 914.*]
 SEC. 21. [*Amends R. S. sec. 4600. See infra, p. 916.*]
 SEC. 22. [*Amends R. S. sec. 4611. See infra, p. 921.*]
 SEC. 23. [*Amends R. S. sec. 4612. See infra, p. 930.*]
 SEC. 24. [*Amends Act of June 26, 1884, ch. 121, sec. 10. See infra, p. 871.*]

SEC. 25. [*Repeal of various sections.*] That section three of chapter four hundred and twenty-one of the laws of eighteen hundred and eighty-six, approved June nineteenth, eighteen hundred and eighty-six; sections forty-five hundred and thirty-one, forty-five hundred and thirty-two, forty-five hundred and thirty-three, forty-five hundred and thirty-four, forty-five hundred and ninety-eight, forty-five hundred and ninety-nine, forty-six hundred and one, and forty-six hundred and nine, of the Revised Statutes, and so much of chapter ninety-seven of the laws of eighteen hundred and ninety-five as relates to allotment, and subdivision eight of section forty-five hundred and eleven of the Revised Statutes, in so far as the same relates to the domestic trade as defined in section nineteen of this Act, and that section three of an Act entitled "An Act to amend the laws relating to navigation, and for other purposes," approved April fourth, eighteen hundred and eighty-eight, chapter sixty-one, page eighty, Statutes Fiftieth Congress, first session, are hereby repealed. [*30 Stat. L. 764.*]

Foreign vessels. — This Act is applicable to seamen shipping in a port of the United States on a foreign vessel. *Kennedy v. Blake*, (C. C. A. 1903) 125 Fed. Rep. 672, *affirming*

(1902) 117 Fed. Rep. 557; *The Alnwick*, (1904) 132 Fed. Rep. 117; *Patterson v. Bark Eudora*, (1903) 190 U. S. 189.

SEC. 26. [*In effect — vessels excepted.*] That this Act shall take effect sixty days after its approval, and shall apply to all vessels not herein specifically exempted, but sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, twenty-three, and twenty-four shall not apply to fishing or whaling vessels or yachts. [*30 Stat. L. 764.*]

SEC. 10. [*Advances and allotment of wages.*] (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person. Any person paying such advance wages shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars.

(b) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his grand parents, parents, wife, sister, or children. But no allotment whatever shall be allowed in the trade between the ports of the United States (except as provided in subdivision C of this section) or in trade between ports of the United States and the Dominion of Canada, Newfoundland, the West Indies and Mexico.

(c) That it shall be lawful for any seaman engaged in a vessel bound from a port on the Atlantic to a port on the Pacific or vice versa, or in a vessel engaged in foreign trade, except trade between the United States and the Dominion of Canada or Newfoundland or the West Indies or the Republic of Mexico, to stipulate in his shipping agreement for an allotment of an amount, to be fixed by regulation of the Commissioner of Navigation, with the approval of the Secretary of the Treasury, not exceeding one month's wages, to an original creditor in liquidation of any just debt for board or clothing which he may have contracted prior to engagement.

(d) That no allotment note shall be valid unless signed by and approved by the shipping commissioner. It shall be the duty of said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

(e) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation as above described of a seaman under this section or shall make a false statement of the nature or amount of any debt claimed to be due from any seaman under this section shall for every such offense be punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding six months, at the discretion of the court.

(f) That this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation: *Provided*, That treaties in force between the United States and foreign nations do not conflict.

(g) That under the direction of the Secretary of the Treasury the Com-

missioner of Navigation shall make regulations to carry out this section. [30 Stat. L. 763.]

This is from the Act of June 26, 1884, ch. 121, sec. 10, 23 Stat. L. 55, as amended by the Act of June 19, 1886, ch. 421, sec. 3, 24 Stat. L. 80, and the Act of Dec. 21, 1898, ch. 28, sec. 24, 30 Stat. L. 763.

The section as originally enacted read as follows:

"SEC. 10. That it shall be, and is hereby, made unlawful in any case to pay any seamen wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen. Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than four times the amount of the wages so advanced or remuneration so paid, and may be also imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advanced wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages: *Provided*, That this section shall not apply to whaling-vessels: *And provided further*, That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation. And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court. This section shall apply as well to foreign vessels as to vessels of the United States; and any foreign vessel the master, owner, consignee, or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States." [23 Stat. L. 56.]

It was first amended by the Act of June 19, 1886, ch. 421, as follows:

"SEC. 3. That section ten of the act entitled 'An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes,' approved June twenty-six, eighteen hundred and eighty-four, be amended by striking out the words 'That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation,' and inserting in lieu thereof the following: That it shall be lawful for any seaman to stipulate in his

shipping agreement for an allotment of all or any portion of the wages which he may earn to his wife, mother, or other relative, or to an original creditor in liquidation of any just debt for board or clothing which he may have contracted prior to engagement, not exceeding ten dollars per month for each month of the time usually required for the voyage for which the seaman has shipped, under such regulations at the Secretary of the Treasury may prescribe, but no allotment to any other person or corporation shall be lawful. And said section ten is further amended by striking out all of the last paragraph after the words 'vessels of the United States,' and inserting in lieu of such words stricken out the following: 'And any master, owner, consignee, or agent of any foreign vessel who has violated this section shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation.'" [24 Stat. L. 80.]

It was again amended by the Act of Dec. 21, 1898, ch. 28, sec. 24, to read as set forth in the text, and by sec. 25 of the same Act (*supra*, p. 870), sec. 3 of the amendatory Act of June 19, 1886, ch. 421, above given, was expressly repealed.

Constitutionality.—The provisions of this section do not violate the Fourteenth Amendment of the Constitution providing for liberty of contract. *Patterson v. Bark Eudora*, (1903) 190 U. S. 169. See also *The Kestor*, (1901) 110 Fed. Rep. 432.

It is within the power of Congress to prescribe the penal provisions of this section, and such provisions are constitutional and valid, and no one within the jurisdiction of the United States can escape liability for a violation of these provisions on the plea that he is a foreign citizen or an officer of a foreign merchant vessel. *Patterson v. Bark Eudora*, (1903) 190 U. S. 169, *reversing* (1901) 110 Fed. Rep. 430. See to the same effect, *The Alnwick*, (1904) 132 Fed. Rep. 117; *Kenney v. Blake*, (C. C. A. 1903) 125 Fed. Rep. 672. *affirming* (1902) 117 Fed. Rep. 557; *The Kestor*, (1901) 110 Fed. Rep. 432.

Application of section.—The provisions of this section are applicable to vessels engaged in the coastwise trade and in trade between the Atlantic ports and the Dominion of Canada and the Pacific ports and British Columbia. *The Eclipse*, (1892) 53 Fed. Rep. 276.

Coasting voyages.—This section is applicable by analogy to a vessel which sails from a port of the United States to a port in Alaska. *The J. D. Peters*, (1896) 78 Fed. Rep. 368.

River navigation.—In *U. S. v. King*, (1885) 23 Fed. Rep. 138, it was held by Bruce, J., that the provisions of this section are not applicable to the shipment of seamen (deckhands) on steamboats navigating rivers such as the Alabama, Tombigbee, and Warrior.

Shipments in foreign ports.—The provisions of this section prohibiting advances of

wages to seamen do not apply to the shipment of seamen in foreign ports, for such shipments and advances are acts done and completed wholly upon foreign soil, and are therefore wholly beyond the jurisdiction of this country. The State of Maine, (1884) 22 Fed. Rep. 734.

The provision that "this section shall apply as well to foreign vessels as to vessels of the United States" furnishes a specific indication that Congress did not intend in this section to refer to the shipment of seamen in foreign ports, but had in view acts done in this country alone. The State of Maine, (1884) 22 Fed. Rep. 734.

Foreign vessels.—This section applies to all American seamen whether shipping on a domestic or a foreign vessel. U. S. v. Nelson, (1900) 100 Fed. Rep. 125.

This section is applicable to the payment on American soil or in American waters of the wages of seamen, who are British subjects, shipping in American ports on British merchant vessels; there being no treaty between the United States and Great Britain inconsistent with such application. The Keator, (1901) 110 Fed. Rep. 432.

The provisions of this section 10, prohibiting the payment of advance wages to seamen hired in our ports, in so far as these provisions apply to foreign shipping are not in conflict with the stipulations of article 8 of the consular convention with France of Feb. 23, 1853. Nor do such provisions come in conflict with any rights which, upon principles of international law, other nations are entitled to exercise within our ports as regards their merchant vessels. (1885) 18 Op. Atty.-Gen. 253.

Evasion by oral agreement.—Where seamen were to receive partly in advance and partly at the end of the voyage wages verbally agreed upon, and shipping articles were signed, making no provision for advances but showing a rate of wages which with the sums advanced gave the seamen what they were entitled to under the oral agreement, such arrangement having been made under authority of the owners and being perfectly understood and assented to by the seamen, it was held that such an arrangement was an evasion of the statute, and the entire

amount of wages could be recovered without any deduction for the advances made. The Samuel E. Spring, (1886) 27 Fed. Rep. 764.

Effect of release.—But such advances cannot be recovered by seamen who have received their wages as provided in the shipping articles, and given a release therefor. The Samuel E. Spring, (1886) 27 Fed. Rep. 764.

Effect of advance payments.—The payment of a seaman's wages in advance except as provided by the Act of June 26, 1884, ch. 121, sec. 10, being forbidden by such section, and a discharge and settlement of wages except in the presence of a duly authorized shipping commissioner being punishable under R. S. sec. 4549, such payments cannot be set up as a defense to a libel for the recovery of wages actually earned by the libellant. The Alexander M. Lawrence, (1900) 101 Fed. Rep. 135.

"It is claimed * * * that an advance of wages represented by an advance note is invalid and money paid under it cannot be deducted from a seaman's wages. [But a rule] made in the interest of the seaman in order to protect him from his improvidence and from imposition, is not to be turned against him, so as to defeat his right of recovery or the right of recovery by his assignee where services have actually been performed and the wages earned." The Staghound, (1899) 97 Fed. Rep. 973.

Effect of later Acts.—When the Act of Feb. 18, 1895, was passed, providing that item No. 8 should be omitted from section 4511 in its applicability to the agreement to be made between the master and each seaman, it did not affect the right to make an allotment under the conditions prescribed by the Act of 1884, as amended by the Act of 1886. In other words, it does not repeal these two Acts by implication. The J. D. Peters, (1896) 78 Fed. Rep. 368.

False statement of debt due.—The provision prohibiting under penalty the making of a false claim or statement refers to making a claim against the sum allotted in the stipulation inserted in the agreement, and does not apply to the making of false claims against seamen generally. U. S. v. Nelson, (1900) 100 Fed. Rep. 125.

Sec. 4535. [Loss of lien.] No seaman shall, by any agreement other than is provided by this Title, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Title, and every stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 268.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or

the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8. *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following. *supra*, p. 850.

A sealer is to be considered a mariner, and therefore entitled to a lien upon the vessel for his wages. *The Ocean Spray*, (1876) 4 Sawy. (U. S.) 105, 18 Fed. Cas. No. 10,412.

Foreign vessels.—This section is inapplicable to a contract for employment on a foreign vessel made in a foreign port. *The Yacht Countess of Dufferin*, (1878) 10 Ben. (U. S.) 155, 6 Fed. Cas. No. 3,280.

Effect of charter party.—It is the statutory policy to preserve the seaman's lien for wages against any implication of waiver by the fact that the seaman had knowledge that the vessel was chartered under an agreement by which the crew were to be paid by the charterers. *The L. L. Lamb*, (1887) 31 Fed. Rep. 29. *Citing The Sirocco*, (1881) 7 Fed. Rep. 599; *The Schooner Highlander*, (1859) 1 Sprague (U. S.) 510, 12 Fed. Cas. No. 6,476; *The Adelphi*, (1862) 1 Fed. Cas. No. 80; *The Erie*, (1859) 3 Ware (U. S.) 225, 8 Fed. Cas. No. 4,512; *The Schooner Montauk*, (1879) 10 Ben. (U. S.) 455, 17 Fed. Cas. No. 9,717; *The Galloway C. Morris*, (1870) 2 Abb. (U. S.) 164, 9 Fed. Cas. No. 5,204; *The Samuel Ober*, (1883) 15 Fed. Rep. 621; *The Clayton*, (1870) 5 Biss. (U. S.) 162, 5 Fed. Cas. No. 2,870; *The International*, (1887) 30 Fed. Rep. 375, and cases cited.

Vessel in receiver's hands.—*Prima facie*, the rendition of mariner's services imports a lien, and the mere fact that a vessel is navigated by a receiver appointed by a state court does not necessarily negative such lien although there may be facts in the particular case to show that the above statute does not apply, or that credit was expressly given to the owner, to the charterer, or to some third person. In fact, the question of lien or no lien is not one of jurisdiction, but of merits. *The Resolute*, (1897) 168 U. S. 437.

Lien on freight.—The seamen have a lien by the maritime law on the freight as well as the vessel for their wages, which is not taken away by the provisions of the law allowing process against the vessel, and where the charterers are owners for the voyage, the seamen have a lien on the cargo shipped on account of the charterers for a charge in the nature of freight. *Poland v. The Brig Spar-*

tan, (1828) 1 Ware (U. S.) 130, 19 Fed. Cas. No. 11,246.

Right to salvage.—It may perhaps be possible to hold that the provision in section 4535 was not intended to apply in cases where a seaman with full knowledge, by an express agreement, undertakes to engage in a salvage service, and to waive any compensation therefor other than his regular wages; yet, where a seaman was hired at monthly wages in the ordinary manner and nothing whatever was at any time said by either party in regard to an abandonment or waiver of any right to claim salvage, the nature of the employment of the vessel does not compel the inference that it was understood that the monthly wages agreed to be paid should be in lieu of any share in any salvage award to which otherwise he might become entitled as a part of the crew. *The Cetewayo*, (1881) 9 Fed. Rep. 717.

Release of salvage.—“While the owners of a ship may release, by express or implied contract, a claim for salvage, yet the seamen of a vessel which saves another are rendered incapable, by section 4535 of the Revised Statutes of the United States, of releasing their claim to participate in any salvage that may accrue from the enterprise.” *Baker Salvage Co. v. The Taylor Dickson*, (1888) 40 Fed. Rep. 261.

Liability of seaman as mortgagor.—The liability of a seaman who was mortgagor of a vessel when a prior owner, for a deficiency on the mortgage, cannot be set off against his claim for wages. *The Schooner Uncle Tom*, (1879) 10 Ben. (U. S.) 234, 24 Fed. Cas. No. 14,335.

A part owner of a vessel who has given a purchase-money mortgage has a lien for wages enforceable *in rem* in admiralty where there are no innocent creditors or purchasers involved. *The M. M. Morrill*, (1897) 78 Fed. Rep. 509.

Seaman as part owner.—The fact that a seaman is a part owner in a vessel will not deprive him of his lien for wages and the right to enforce the same by a process *in rem* in admiralty. *The Schooner Uncle Tom*, (1879) 10 Ben. (U. S.) 234, 24 Fed. Cas. No. 14,335.

Sec. 4536. [*No attachment or assignment of wages.*] No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of wages, or of salvage, made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are authorized by this Title. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 276.

See Act of June 9, 1874, ch. 260. *supra*, p. 850, and note thereunder.

This section is made applicable to seamen “shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the

Dominion of Canada, or New Foundland, or the West Indies, or Mexico,” by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8. *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Fishermen. — One shipping as a fisherman on a voyage to Behring Sea and return, and receiving, instead of monthly wages, compensation for his services at a certain amount per thousand fish caught by him, is not a seaman within the meaning of this section. *Telles v. Lynde*, (1891) 47 Fed. Rep. 912.

This provision is general in its terms, and is applicable to all wages earned by seamen, whatever the nature of the voyage. But by the Act of June 9, 1874, fishing and whaling voyages where the seamen receive as their compensation a share or lay in the catchings, are taken out of the operation of the section. *Ross v. Bourne*, (1883) 14 Fed. Rep. 858.

Seal hunters. — Hunters on a sealing voyage are mariners within the meaning of this section, and an agreement by them on the purchase of an interest in the vessel to apply one-half of their earnings on the prospective voyage, to pay their indebtedness on notes given for the purchase price, comes within the provisions of the section as an assignment of wages. *The M. M. Morrill*, (1897) 78 Fed. Rep. 509.

Coastwise voyages. — It was held in *McCarty v. Steam-Propeller City of New Bedford*, (1880) 4 Fed. Rep. 818, prior to the Act of Aug. 19, 1890, ch. 901, that the provision of the Act of June 9, 1874, which declares that none of the provisions of the Act of June 7, 1872, shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, did not include the provisions of the Act of 1872 reproduced in R. S. sec. 4536, and that wages earned by a seaman in such coastwise trade are not subject to attachment.

Car ferries. — A person employed on board a steam ferryboat used for the purpose of transporting trains across the Mississippi river as a continuous line of transportation by a railroad company by which it is owned, is entitled to the benefit of this section. *The St. Louis*, (1891) 48 Fed. Rep. 312.

Attachment. — Irrespective of this section, and in the absence of express legislation on the subject by Congress, the right of a mariner to sue in the admiralty for his wages is not taken away or suspended by an attachment of his wages by trustee process in

an action at law. *Ross v. Bourne*, (1883) 14 Fed. Rep. 858.

Execution. — There is, however, a marked difference between an attachment to secure the payment of an asserted, and, it may be, disputed and unfounded, claim, and the levy of an execution which simply seizes upon property of a debtor for the purpose of satisfying a valid judgment; and the wages of a seaman may be taken on execution issued out of a state court in the absence of a statute exempting them from such seizure. A prior payment of the amount due a seaman for wages is satisfaction of an execution issued against him and will constitute a good defense to a subsequent action brought by him in admiralty for the recovery of such wages. *The Queen*, (1890) 93 Fed. Rep. 834.

Where a seaman's wages were taken from his employers under execution and the proceedings supplementary thereto and not under attachment or arrestment, the provisions of this law do not exempt such wages from such process, and the court has jurisdiction to make an appropriation of the wages in satisfaction of the judgment against the seaman. *Telles v. Lynde*, (1891) 47 Fed. Rep. 912.

What constitutes an assignment. — A written order by a seaman on the captain and owners of a vessel to pay to a certain person named a certain sum, "to be paid when due, for services as sailor on board the W., and to be charged to my account at the end of the voyage or when duly discharged from said vessel," is an assignment of wages made prior to the accruing thereof within the prohibition of this section. *The George W. Wells*, (1902) 118 Fed. Rep. 761.

An agreement by a pilot serving on a vessel in which he had purchased a share, made with the other owners, that from his earnings as pilot there should be yearly retained by the other owners such sum of money as he was able to spare until the balance of the consideration of his purchase should be paid, is not an assignment of unaccrued wages within the meaning of this section, and such agreement gives no authority to the owners to apply any part of his wages to the purchase money without further direction from him. *Somers v. The Jersey Blue*, (1879) 2 N. J. L. J. 359, 22 Fed. Cas. No. 13,169.

Sec. 4537. [*Limit of sum recoverable during voyage.*] No sum exceeding one dollar shall be recoverable from any seaman, by any one person, for any debt contracted during the time such seaman shall actually belong to any vessel, until the voyage for which such seaman engaged shall be ended. [*R. S.*]

Act of July 20, 1790, ch. 29, 1 Stat. L. 133.

Sec. 4538. [*Effects of deceased seamen.*] Whenever any seaman or apprentice belonging to or sent home on any merchant-vessel, whether a foreign-going or domestic vessel, employed on a voyage which is to terminate in the United States, dies during such voyage, the master shall take charge of all moneys, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of such clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log-book, and

cause it to be attested by the mate and one of the crew, containing the following particulars:

First. A statement of the amount of money so left by the deceased.

Second. In case of a sale, a description of each article sold, and the sum received for each.

Third. A statement of the sum due to deceased as wages, and the total amount of deductions, if any, to be made therefrom. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 271.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Deductions.—The language "the total amount of deductions, if any, to be made therefrom," found in specification three of this section, applies only to wages due the deceased mentioned in this specification. The

proceeds of the effects of the deceased must be paid to the shipping commissioner or accounted for as provided by the sections. No deductions from such proceeds can be made on account of any claim due the vessel by the deceased for wages advanced and not earned. *U. S. v. Tobey*, (1882) 12 Fed. Rep. 347.

Sec. 4539. [*Proceedings in regard to effects of deceased seamen.*] In cases embraced by the preceding section, the following rules shall be observed:

First. If the vessel proceeds at once to any port in the United States, the master shall, within forty-eight hours after his arrival, deliver any such effects remaining unsold, and pay any money which he has taken charge of, or received from such sale, and the balance of wages due to the deceased, to the shipping-commissioner at the port of destination in the United States.

Second. If the vessel touches and remains at some foreign port before coming to any port in the United States, the master shall report the case to the United States consular officer there, and shall give to such officer any information he requires as to the destination of the vessel and probable length of the voyage; and such officer may, if he considers it expedient so to do, require the effects, money, and wages to be delivered and paid to him, and shall, upon such delivery and payment, give to the master a receipt; and the master shall within forty-eight hours after his arrival at his port of destination in the United States produce the same to the shipping-commissioner there. Such consular officer shall, in any such case, indorse and certify upon the agreement with the crew the particulars with respect to such delivery and payment.

Third. If the consular officer does not require such payment and delivery to be made to him, the master shall take charge of the effects, money, and wages, and shall, within forty-eight hours after his arrival at his port of destination in the United States, deliver and pay the same to the shipping-commissioner there.

Fourth. The master shall, in all cases in which any seaman or apprentice dies during the voyage or engagement, give to such officer or shipping-commissioner an account, in such form as they may respectively require, of the effects, money, and wages so to be delivered and paid; and no deductions claimed on such account shall be allowed unless verified by an entry in the official log-book, if there be any; and by such other vouchers, if any, as may be reasonably required by the officer or shipping-commissioner to whom the account is rendered.

Fifth. Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United States, the shipping-commissioner shall grant to the master a certificate to that effect. No officer of customs shall clear any foreign-going vessel without the production of such certificate. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 271.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Effects in other cases.—It is only in cases

of the death of a seaman, and under the circumstances indicated in the second division of this section, that any consular officer is

authorized to require the money, wages, etc., of a seaman to be delivered to him. (1875) 14 Op. Atty.-Gen. 520.

Sec. 4540. [*Penalty for neglect in regard to seaman's effects.*] Whenever any master fails to take such charge of the money or other effects of a seaman or apprentice during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as is above directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the circuit court in whose jurisdiction such port of destination is situate, and shall pay and deliver the same accordingly; and he shall, in addition, for every such offense, be liable to a penalty of not more than treble the value of the money or effects, or, if such value is not ascertained, not more than two hundred dollars; and if any such money, wages, or effects are not duly paid, delivered, and accounted for by the master, the owner of the vessel shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly; and if he fails to account for and pay the same, he shall, in addition to his liability for the money and value, be liable to the same penalty which is incurred by the master for a like offense; and all money, wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the courts and by the modes of proceeding by which seamen are enabled to recover wages due to them. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 271. 260, note thereunder, and provisions following, *supra*, p. 850.

For exceptions, see Act of June 9, 1874, ch.

Sec. 4541. [*Duties of consular officers in regard to deceased seaman's effects.*] Whenever any such seaman or apprentice dies at any place out of the United States, leaving any money or effects not on board of his vessel, the consular officer of the United States at or nearest the place shall claim and take charge of such money and effects, and shall, if he thinks fit, sell all or any of such effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions of this Title, and shall quarterly remit to the circuit court of the circuit embracing the port from which such vessel sailed, or the port where the voyage terminates, all moneys belonging to or arising from the sale of the effects or paid as the wages of any deceased seamen or apprentices which have come to his hands; and shall render such accounts thereof as the circuit court requires. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 272.

This section was amended to read as above by the Act of March 3, 1879, ch. 389, sec. 4, 29 Stat. L. 689. The amendment consisted in striking out after the words "shall quarterly remit to the" the words "district judge for the district," appearing in the section as originally enacted, and substituting in place thereof the words "circuit court of the cir-

cuit," and by striking out, after the words "such accounts thereof as the," the words "district judge," appearing in the section as originally enacted, and substituting in place thereof the words "circuit court," so as to make the section read as given in the text.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4542. [*Payment of wages in case of death within the United States.*] Whenever any seaman or apprentice dies in the United States, and is, at the time of his death, entitled to claim from the master or owner of any vessel in which he has served, any unpaid wages or effects, such master or owner shall pay and deliver, or account for the same, to the shipping-commissioner at the

port where the seaman or apprentice was discharged, or was to have been discharged or where he died. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 272.

This section was amended by the Act of March 3, 1897, ch. 389, sec. 6, 29 Stat. L. 689, "by adding thereto the words 'or where he died,' inserted in the section as above set out.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the

trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4543. [*Payment to circuit court.*] Every shipping-commissioner in the United States shall, within one week from the date of receiving any such money, wages, or effects of any deceased seaman or apprentice, pay, remit, or deliver to the circuit court of the circuit in which he resides, the money, wages, or effects, subject to such deductions as may be allowed by the circuit court for expenses incurred in respect to such money and effects; and should any commissioner fail to pay, remit, and deliver the same to the circuit court, within the time hereinbefore mentioned, he shall incur a penalty of not more than treble the value of such money and effects. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 272.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or

the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4544. [*Distribution of seaman's money and effects by circuit court.*] If the money and effects of any seaman or apprentice paid, remitted, or delivered to the circuit court, including the moneys received for any part of his effects which have been sold, either before delivery to the circuit court, or by its directions, do not exceed in value the sum of three hundred dollars, then, subject to the provisions hereinafter contained, and to all such deductions for expenses incurred in respect to the seaman or apprentice, or of his money and effects, as the said court thinks fit to allow, the court may pay and deliver the said money and effects to any claimants who can prove themselves either to be his widow or children, or to be entitled to the effects of the deceased under his will, or under any statute, or at common law, or to be entitled to procure probate, or take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out, and shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered; or may, if it thinks fit so to do, require probate, or letters of administration or confirmation, to be taken out, and thereupon pay and deliver the said money and effects to the legal personal representatives of the deceased; and if such money and effects exceed in value the sum of three hundred dollars, then, subject to deduction for expenses, the court shall pay and deliver the same to the legal personal representatives of the deceased. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 272.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or

the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4545. [*Unclaimed wages and effects of deceased seamen.*] A circuit court, in its discretion, may at any time direct the sale of the whole or any part of the effects of a deceased seaman or apprentice, which it has received or may hereafter receive, and shall hold the proceeds of such sale as the wages of deceased seamen are held. When no claim to the wages or effects or proceeds of the sale of the effects of a deceased seaman or apprentice, received by a circuit court, is substantiated within six years after the receipt thereof by the court, it shall be in the absolute discretion of the court, if any subsequent claim is made, either to allow or refuse the same. Such courts shall, from time to time, pay any moneys arising from the unclaimed wages and effects of deceased seamen, which in their opinion it is not necessary to retain for the purpose of satisfying claims, into the Treasury of the United States, and such moneys shall form a fund for, and be appropriated to, the relief of sick and disabled and destitute seamen belonging to the United States merchant marine service. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 273.

This section was amended to read as above by the Act of March 3, 1897, ch. 389, sec. 7, 29 Stat. L. 689. The amendment consists in the addition of all that part of the section preceding the words "When no claim to the wages," etc., and the addition of the words "or proceeds of the sale of the effects."

This section is made applicable to seamen "shipped by a shipping commissioner for any

American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4546. [*Summons for nonpayment of wages.*] Whenever the wages of any seaman are not paid within ten days after the time when the same ought to be paid according to the provisions of this Title, or any dispute arises between the master and seamen touching wages, the district judge for the judicial district where the vessel is, or in case his residence be more than three miles from the place, or he be absent from the place of his residence, then, any judge or justice of the peace, or any commissioner of a circuit court, may summon the master of such vessel to appear before him, to show cause why process should not issue against such vessel, her tackle, apparel, and furniture, according to the course of admiralty courts, to answer for the wages. [R. S.]

Act of July 20, 1790, ch. 29, 1 Stat. L. 133; Act of Aug. 23, 1842, ch. 188, 5 Stat. L. 517.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the

Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

See cases under following section.

Sec. 4547. [*Libel for wages.*] If the master against whom such summons is issued neglects to appear, or, appearing, does not show that the wages are paid or otherwise satisfied or forfeited, and if the matter in dispute is not forthwith settled, the judge or justice or commissioner shall certify to the clerk of the district court that there is sufficient cause of complaint whereon to found admiralty process; and thereupon the clerk of such court shall issue process against the vessel. In all cases where the matter in demand does not exceed one hundred dollars the return day of the monition or citation shall be the first day of a stated or special session of court next succeeding the third day after the service of the monition or citation, and on the return of process in open court, duly served, either party may proceed therein to proofs and hearing without other notice, and final judgment shall be given according to the usual

course of admiralty courts in such cases. In such suits all the seamen having cause of complaint of the like kind against the same vessel may be joined as complainants, and it shall be incumbent on the master to produce the contract and log book, if required to ascertain any matter in dispute; otherwise the complainants shall be permitted to state the contents thereof, and the burden of proof of the contrary shall be on the master. But nothing herein contained shall prevent any seaman from maintaining any action at common law for the recovery of his wages, or having immediate process out of any court having admiralty jurisdiction wherever any vessel may be found, in case she shall have left the port of delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the day when such wages are due, in accordance with section forty-five hundred and twenty-nine of the Revised Statutes. [R. S.]

Act of July 20, 1790, ch. 29, 1 Stat. L. 133; Act of Aug. 23, 1842, ch. 188, 5 Stat. L. 517.

This section was amended to read as above by the Act of Dec. 21, 1898, ch. 28, sec. 6, 30 Stat. L. 756. The amendment consists in inserting the words beginning, "In all cases where the matter in demand," etc., and ending with the words "hearing without other notice," in place of the words, "and the suit shall be proceeded on in the court," appearing in the section as originally enacted, and inserting near the end of the section, after the words, "ten days next after the," the words closing the section, in lieu of the words "delivery of her cargo or ballast" appearing in the section as originally enacted.

It is provided by section 26 of the amendatory Act that section 6 above set out "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1896, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

Scope of notes. — The cases for both sections 4546, 4547 are given hereunder.

To what vessels applicable. — The provisions of these sections with respect to the recovery of wages apply only to the classes of vessels enumerated in sec. 4520. The *M. W. Wright*, (1871) Brown Adm. 290, 17 Fed. Cas. No. 9,983.

Fishing vessels. — These provisions of the law are not applicable to vessels and their crews engaged on a fishing cruise, but are to be restricted to merchant ships and those employed thereon. The *Grace Darling* (1878) 2 Hask. (U. S.) 278, 10 Fed. Cas. No. 5,651.

Foreign vessels. — Under the treaty between the United States and the kingdom of Italy, stipulating that "consuls-general, consuls, vice-consuls, and consular agents shall have exclusive charge * * * and shall alone take cognizance of questions, of whatever kind, that may arise, both at sea and in port, between the captain, officers and seamen without exception, and especially of those relating to wages, and the fulfilment of agree-

ments reciprocally made," a justice of the peace has no power under R. S. secs. 4546 and 4547 to compel the clerk to issue admiralty process against an Italian ship for the wages of a seaman thereon. The *Salomoni*, (1886) 29 Fed. Rep. 534.

Shares as wages. — Agreements by which seamen are to receive for their services a share of the profits of the voyage are not partnerships, but contracts of hiring, and the shares so agreed upon are wages, and are recoverable as such, and this is so whether the compensation is to be made in kind or in money. *Reed v. Hussey*, (1836) Blatchf. & H. Adm. 525, 20 Fed. Cas. No. 11,646.

To what remedy applicable. — The sections prescribing the time and manner in which seamen may prosecute suits for wages have reference to actions *in rem* only and not to actions *in personam*. The right of a seaman to sue *in personam* for his wages is perfect as soon as the period of his service is completed. If the seaman is discharged before the delivery of the cargo, his right to sue *in personam* for his wages is perfect from the time of his discharge. *Freeman v. Baker*, (1833) Blatchf. & H. Adm. 372, 9 Fed. Cas. No. 5,084.

The right of a seaman to his wages is perfect upon the completion of his service. Before Act of July 20, 1790, ch. 29, sec. 6, if payment was refused he could instantly have commenced a suit *in personam* against the owners or master, or *in rem* against the vessel or freight. The statute affects only one of these remedies, viz., that against the vessel. It does not touch suits *in personam* or against the freight. By the statute, as a general rule, no proceedings can be had against the vessel, until ten days after the right to wages has accrued. But there are three events in which such proceedings may be had within the ten days, viz., (1) if a dispute has arisen; (2) if the vessel has departed from the port of her discharge; (3) if she is about to proceed to sea. In the last two cases the statute is inoperative and the right to process is the same as if it had never been passed. The expiration of ten days, and a dispute having arisen, are by the Act made equivalent to each other; and upon the happening of either the proceeding by summons to the master is authorized, but not required. The *Ship William Jarvis*,

(1859) 1 Sprague (U. S.) 485, 29 Fed. Cas. No. 17,697.

The remedy is cumulative and not exclusive, and notwithstanding these provisions the courts of admiralty remain open to seamen for the usual process in *rem* against the vessel whenever they prefer to pursue that course. The Frank C. Barker, (1884) 19 Fed. Rep. 332; Murray v. Ferry-Boat F. B. Nimick, (1880) 2 Fed. Rep. 88; The Ship William Jarvis, (1859) 1 Sprague (U. S.) 485; The M. W. Wright, (1871) Brown's Adm. 290; The Waverly, (1877) 7 Biss. (U. S.) 465; The Schooner Edwin Post, (1881) 6 Fed. Rep. 206; The Shelbourne, (1887) 30 Fed. Rep. 510.

Time to sue.—A stipulation in the articles that the seamen shall not in any case demand their wages until the expiration of a certain time, is void in case the service is completed or the seamen are discharged before the expiration of that time. The Cypress, (1829) 1 Blatchf. & H. Adm. 83, 6 Fed. Cas. No. 3,530.

A seaman who hires for a trading voyage for a specified time, cannot sue for wages until the expiration of the time unless there be proof of his actual or constructive release. The Warrington, (1832) Blatchf. & H. Adm. 335, 29 Fed. Cas. No. 17,208.

The ten days' exemption from arrest.—"The language of section 4546 is somewhat different from that in section 6 of the Act of 1790 (1 Stat. L. 133), and may require a different construction; as by the latter process might issue, if the wages were not paid within ten days after the discharge of the cargo; while by section 4546, process could issue, if the wages are not paid within ten days after the time when the same ought to be paid according to the provisions of the statute." Fox, D. J., in *The Grace Darling*, (1878) 2 Hask. (U. S.) 278, 10 Fed. Cas. No. 5,651.

After service complete.—In *The Mary*, (1838) 1 Ware (U. S.) 465, 16 Fed. Cas. No. 9,191, it was held that the ten days "begin to run from the time when the wages become due, that is, from the day when the term of service is completed." *The Annie M. Smull*, (1872) 2 Sawy. (U. S.) 226, 1 Fed. Cas. No. 423.

After discharge of cargo.—Under the Act of July 20, 1790, the seaman could not sue until ten days after the discharge of the cargo had elapsed, unless there was a dispute between the master and mariners touching the wages. *The Schooner Eagle*, (1846) Olc. Adm. 232, 8 Fed. Cas. No. 4,233. Or unless she was about to proceed to sea before expiration of the ten days. *The Cypress*, (1829) 1 Blatchf. & H. Adm. 83, 6 Fed. Cas. No. 3,530.

Premature suits.—A suit brought to recover wages before the time allowed by Act of 1790, sec. 6, has elapsed is prematurely brought and will be dismissed. *The Schooner David Faust*, (1867) 1 Ben. (U. S.) 183, 7 Fed. Cas. No. 3,595.

Fifteen days will be taken as a reasonable time for a vessel to unload in ordinary cases, and where, for wages due on the delivery of

the cargo, a vessel was arrested on the fourteenth day after she was moored, in her port of discharge, the suit was dismissed as prematurely brought. *The Martha*, (1830) Blatchf. & H. Adm. 151, 16 Fed. Cas. No. 9,144.

Where suit had been brought against a vessel by summons or citation before the ten days had expired, and the master of the vessel had neglected to appear upon such summons and show cause, and proceedings were taken by default against the vessel, it was held, that the claimants were not bound to answer in bar of the suit, and that it had been prematurely brought. *Hill v. The Triumph*, (1841) 12 Fed. Cas. No. 6,500.

There is no distinction, as to what is necessary to constitute the delivery of a cargo, where it is owned by a freighter, and where both ship and cargo belong to the same person. *The Martha*, (1830) Blatchf. & H. Adm. 151, 16 Fed. Cas. No. 9,144.

Exceptions.—"While this statute furnishes the seaman a simple and cost-saving mode of recovering his wages, if they are not paid within ten days after the time when the same ought to be paid, or if any dispute has arisen between the master and seaman touching wages before the expiration of ten days, it does not prevent him from maintaining an action at common law for the recovery of his wages, or having immediate process out of any court having admiralty jurisdiction wherever the vessel may be found, in case she shall have left the port of delivery, where her voyage ended, before payment of the wages, or in case she shall be about to proceed to sea before the end of ten days next after the delivery of her cargo or ballast, or in case his wages have not been paid within ten days after the time when the same ought to have been paid." *The Shelbourne*, (1887) 30 Fed. Rep. 510.

Vessel about to proceed.—Under Act of July 20, 1790, sec. 6, in order that admiralty process might issue within ten days after the arrival of the vessel it was sufficient to show a reasonable ground of belief that the vessel was about to proceed to sea within the ten days. *The Trial*, (1830) Blatchf. & H. Adm. 94, 24 Fed. Cas. No. 14,170.

Dispute as to wages.—A demand of wages and a refusal by the owner to pay till after ten days, do not constitute a dispute, within the statute, so as to authorize process in *rem* before the expiration of the ten days. *The Commerce*, (1842) 1 Sprague (U. S.) 34, 6 Fed. Cas. No. 3,054.

Allegations as to exceptions.—The complaint made by the crew must show that ten days have elapsed after the time when the wages ought to have been paid, or that a dispute has arisen between the master and seamen touching their wages. *The Rockie E. Yates*, (1880) 2 Hask. (U. S.) 430, 20 Fed. Cas. No. 11,980a.

Discharge without pay.—In the case of *The Schooner David Faust*, (1867) 1 Ben. (U. S.) 183, 7 Fed. Cas. No. 3,595, it was said by Blatchford, J.: "It has always been held in this court that where a seaman is discharged from a vessel, after her arrival,

either arbitrarily or with his assent, the discharge terminates the contract, and the provision for ten days' delay after delivery of the cargo is released, and the seaman may proceed at once for his wages. The shipmaster or ship-owner may waive the statutory provision in regard to the ten days' delay, and is held to have done so in case he discharges a seaman without paying him his wages."

"It is very questionable whether a delay of ten days can be exacted, where a seaman is absolutely discharged from the vessel. That terminates the contract and takes away his claim for a continuance of wages, and it would seem but a just reciprocity to hold that the ship's term of credit is expired when by the act of the master the seamen can no longer charge her with wages." *The Cypress*, (1829) Blatchf. & H. Adm. 83, 6 Fed. Cas. No. 3,530.

Where seamen are discharged without any payment of wages, and no cause is assigned for the failure to pay them the amount of wages then payable, and there is no dispute as to the balance then due, they may recover double pay for ten days, although their libel is filed within such time. The right to double pay does not terminate by the commencement of an action to recover the wages earned. *The Steamship Columbia*, (1873) 6 Ben. (U. S.) 398, 6 Fed. Cas. No. 3,034.

Suits in personam.—The statute which precludes a seaman from having admiralty process for his wages against the vessel until ten days after the discharge of the cargo, does not affect his right to proceed *in personam*. *The Commerce*, (1842) 1 Sprague (U. S.) 34, 6 Fed. Cas. No. 3,054; *Freeman v. Baker*, (1833) Blatchf. & H. Adm. 372, 9 Fed. Cas. No. 5,084.

Waiver.—The ten days' exemption from arrest of a ship is waived by appearance, claim, and answer without protest, after that time has elapsed. *The Grace Darling*, (1878) 2 Hask. (U. S.) 278, 10 Fed. Cas. No. 5,651.

Where, in a suit *in rem* for wages, an answer is filed to the merits and issue is joined, and the case is brought to a hearing, and proofs are taken on both sides, that is a waiver by the claimant of any right of exception to the regularity of the proceedings of the libellant as to the time of instituting his suit. *The Edward*, (1832) Blatchf. & H. Adm. 286, 8 Fed. Cas. No. 4,289.

Procedure on issue of process.—Section 4547 does not require the filing of any depositions; indeed, does not require the taking of any depositions. The commissioner is authorized to make inquiry, and in his discretion to send up the certificate. His discretion is absolute and no one has a right to question it. Therefore, he need not send up any testimony, and cannot charge for it. *Kelly v. The Topsy*, (1891) 45 Fed. Rep. 486.

Certificate for process.—The court will not look beyond the certificate of the officer for the authority of the clerk to issue the process prescribed, and when such certificate is issued by a United States commissioner, it must show on its face that the commissioner had authority to act; and where such certificate

does not state the residence of the judge of the district to be more than three miles from the place, or that he was absent from his residence at the time the proceedings were instituted, the writ will be set aside. *Kief v. The Steamboat London*, (1852) Newb. Adm. 6; (1854) 6 McLean (U. S.) 184, 14 Fed. Cas. No. 7,759.

"The commissioner is bound to inform himself of the absence of the judge from his place of residence, but the court will not go behind his certificate in that matter. . . . This being the action of a United States official, the maxim *omnia presumuntur esse acta rite* should apply to his action." *The Schooner Jefferson Borden*, (1881) 6 Fed. Rep. 301.

Stay of proceedings.—It is questionable whether an appeal to the judge lies from an order of a commissioner or justice of the peace granting certificates of cause for admiralty process under the Act of 1790. But the judge or court may stay proceedings or act upon the petition *de novo*. *The Schooner Eagle*, (1846) Olc. Adm. 232, 8 Fed. Cas. No. 4,233.

Issue of process.—In the absence of the judge the clerk may issue process according to rules prescribed or instructions given by the judge. *The Ship William Jarvis*, (1859) 1 Sprague (U. S.) 485, 29 Fed. Cas. No. 17,697.

Who may hear case.—While by the terms of the Act of Congress the district judge of the United States for the judicial district where the vessel is, is primarily charged with the duty of hearing these cases, if his residence be within three miles from the place where the vessel is; yet if he be absent from his place of residence, jurisdiction is without doubt given by the Act of Congress to any commissioner of the Circuit Court in the district to hear and dispose of the case in the manner pointed out by law. *The Schooner Jefferson Borden*, (1881) 6 Fed. Rep. 301.

Process.—A warrant of arrest on a libel filed for seamen's wages, issued by the clerk, without compliance with the statute, is void. *The Berkeley*, (1893) 58 Fed. Rep. 921.

Appearance and defense.—The master has a right to appear by attorney and establish a defense to the seamen's claims if he can. *The Rockie E. Yates*, (1880) 2 Hask. (U. S.) 430, 20 Fed. Cas. No. 11,980a.

Although in an action *in rem* for wages, a warrant is issued under a certificate of sufficient cause of complaint for admiralty process, conformably to the statute, yet the owner of the vessel may intervene by answer and bar the action by proving that the libellant had no right to sue. *The Warrington*, (1832) Blatchf. & H. Adm. 335, 29 Fed. Cas. No. 17,208.

Hearing.—The vessel against which the process is sought must be within the district at the time of the hearing before the justice. *The Rockie E. Yates*, (1880) 2 Hask. (U. S.) 430, 20 Fed. Cas. No. 11,980a.

Offset.—A valid claim of a seaman for wages may not be defeated by offsetting against it a debt of the seaman assigned to the master of the vessel personally. *The Journeyman*, (1894) 60 Fed. Rep. 295.

Running of wages.—The filing of a libel for wages is an election to treat the contract as at an end, and the seamen are not entitled to wages while the vessel is in the marshal's custody under their claim and during which time they render no services. *The Chas. L. Baylis*, (1885) 25 Fed. Rep. 863.

Personal liability for wages.—The master is personally liable for the wages of seamen shipped by him, which accrued while he was in command. *Temple v. Turner*, (1877) 123 Mass. 128.

The master is personally responsible for wages of a seaman earned while under his command, though the seaman was employed by a former master. *Smith v. Oakes*, (1886) 141 Mass. 454.

Part payments.—Payments to a seaman are properly applied to the earliest wages earned, though under a prior master. *Smith v. Oakes*, (1886) 141 Mass. 451.

Joinder of parties.—Under the section prior to the amendment, seamen having the same cause of complaint were compelled to join. *Kelly v. The Topsy*, (1891) 45 Fed. Rep. 486.

In a suit by a seaman for wages the court cannot compel the joinder of other seamen as libelants who have not brought suit. *Nelson v. The Hercules*, (1841) 4 Law Rep. 22, 17 Fed. Cas. No. 10,108.

The practice of the court, in conformity with the spirit of the statute, is to allow any of the members of a crew to come in on summary petition and enjoy the advantages of a prosecution instituted by a shipmate to recover the wages of a common voyage. If the Act is not to be construed as imperative, and as compelling the union of all the mariners in one suit, to recover the wages of the same voyage, it, at all events, removes every occasion for different actions and takes away all equity to costs when different actions are instituted. *Reed v. Hussey*, (1836) Blatchf. & H. Adm. 525, 20 Fed. Cas. No. 11,646.

Where the vessel is liable to two libelants for wages, for which, under the practice of the court in respect to the consolidation of suits, they may be compelled to sue in common, they may join in one action *in rem*, not only in suing for the common demands, but also in respect to other claims which are peculiar to each. *The Sloop Merchant*, (1847) Abb. Adm. 1, 17 Fed. Cas. No. 9,434.

Libel.—It is not necessary to annex to a libel for wages an account stating the rate of wages and the precise balance due. It is sufficient if the contract is stated and the service alleged in proper form. If the libelant sets forth a particular balance as due, and it appears by the proofs that a larger sum is due, the court is not limited to the precise amount claimed in the libel. Under a prayer for further relief a larger sum may be decreed if justice requires it. *Pratt v. Thomas*, (1837) 1 Ware (U. S.) 437, 19 Fed. Cas. No. 11,377.

Evidence.—The statement of the seaman

is incompetent evidence to prove services rendered by him on board the vessel under the shipping articles. *The Brig Osceola*, (1846) Olc. Adm. 450, 18 Fed. Cas. No. 10,602.

Of agreement.—In a suit upon shipping articles, by a seaman to recover wages for a voyage, if the articles are not produced by the master or owner at the trial, after due requirement by the seaman, his statement of the contents thereof, when disputed, will be *prima facie* evidence of the same. *The Brig Osceola*, (1846) Olc. Adm. 450, 18 Fed. Cas. No. 10,602.

The right of a seaman to his wages depends on the service and not on the shipping articles, and he is not obliged to call for them in order to establish his claim to wages, though he may do so. *The Trial*, (1830) Blatchf. & H. Adm. 94, 24 Fed. Cas. No. 14,170.

Call for articles.—But a call for the articles at the time of trial is not a sufficient requirement unless it be made to appear they are then in the presence of the court, or directly within the control of the master or owner. *The Brig Osceola*, (1846) Olc. Adm. 450, 18 Fed. Cas. No. 10,602.

Where a seaman shipped under articles at Boston in December, 1842, and at New Orleans in March, 1843, and left the ship at Bordeaux in June, 1843, and in his libel filed against the vessel in court for wages on those voyages he prayed that the shipping articles might be produced by the master or owner, it was held that this was not such notice or requirement as would render his statement proof of their contents. *The Brig Osceola*, (1846) Olc. Adm. 450, 18 Fed. Cas. No. 10,602.

Contradicting evidence.—The claimants on proving a reasonable excuse for not producing the shipping articles on trial, may contradict by parol evidence the statement of their contents by the mariner. *The Brig Osceola*, (1846) Olc. Adm. 450, 18 Fed. Cas. No. 10,602.

Interest.—In a suit for wages, interest is allowed from the time of a demand proved; and if no such demand is proved, from the commencement of the suit. *Gammell v. Skinner*, (1814) 2 Gall. (U. S.) 45, 9 Fed. Cas. No. 5,210.

In actions for seamen's wages, interest will as a general rule be allowed from the time the wages were due, until a tender or payment under the decree of the court. Interest will be allowed only upon regular wages, and not upon extra wages recovered by way of compensation for short allowance. *The Elizabeth Frith*, (1831) Blatchf. & H. Adm. 195, 8 Fed. Cas. No. 4,361.

Costs.—When two libels are filed where one only is required, costs only in one are allowed. *The R. P. Chase*, (1861) 3 Ware (U. S.) 294, 20 Fed. Cas. No. 12,099.

Lien for wages.—See notes under R. S. sec. 4535, *supra*, p. 873.

Time when wages due.—See notes under R. S. sec. 4530, *supra*, p. 867.

Sec. 4548. [Wages payable in gold.] Moneys paid under the laws of the United States, by direction of consular officers or agents, at any foreign port

or place, as wages, extra or otherwise, due American seamen, shall be paid in gold or its equivalent, without any deduction whatever, any contract to the contrary notwithstanding. [R. S.]

Act of March 3, 1873, ch. 265, 17 Stat. L. 602.

[IV. DISCHARGE.]

Sec. 4549. [*Mode of discharge.*] All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port, or, being of the burden of seventy-five tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall be discharged and receive their wages in the presence of a duly authorized shipping-commissioner under this Title, except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seaman belonging thereto, or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than fifty dollars. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 266

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8. *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Forcible abandonment of officer or mariner in foreign port. See SHIPPING AND NAVIGATION.

To what voyages applicable. — For a voyage between the United States and the West Indies the crew may be paid off by the master elsewhere than in the presence of the shipping commissioner other than himself. *The Bark Brothers*, (1879) 10 Ben. (U. S.) 400, 4 Fed. Cas. No. 1,968; *U. S. v. French*, (1881) 9 Fed. Rep. 369.

Effect of R. S. sec. 4504. — Section 4504

makes a master or owner of a vessel bound on certain voyages a duly authorized shipping commissioner within the meaning of section 4549. *The Bark Brothers*, (1879) 10 Ben. (U. S.) 400, 4 Fed. Cas. No. 1,968.

If the master himself may not be regarded in certain cases as a duly authorized shipping commissioner in the terms of the section, there can be no doubt that the section is to be qualified by the language of section 4504, which expressly declares that nothing in this title shall prevent the owner, consignee, or master of any vessel, except vessels bound from a port in the United States to any foreign port, other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the republic of Mexico, etc., from performing himself, so far as his vessel is concerned, the duties of shipping commissioner. This language expressly applies to the whole title, and, of course, to section 4549, which is a part of it. *U. S. v. French*, (1881) 9 Fed. Rep. 369.

Settlement and release. — See notes under R. S. sec. 4552, *infra*.

Sec. 4550. [*Account on discharge.*] Every master shall, not less than forty-eight hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a shipping-commissioner, to such shipping-commissioner, a full and true account of his wages, and all deductions to be made therefrom on any account whatsoever; and in default shall, for each offense, be liable to a penalty of not more than fifty dollars. No deduction from the wages of any seaman except in respect of some matter happening after such delivery shall be allowed, unless it is included in the account delivered; and the master shall, during the voyage, enter the various matters in respect to which such deductions are made, with the amounts of the respective deductions as they occur, in the official log-book, and shall, if required, produce such

book at the time of the payment of wages, and, also, upon the hearing, before any competent authority, of any complaint or question relating to such payment. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 267.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8. *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Statements and entries. — The provisions of this section requiring a statement of the wages of the crew to be made by the master to the shipping commissioner at the end of the voyage, and all deductions to be entered in the log, do not prevent the court, in a suit for wages, from adjudicating upon the amount due according to the facts proven, although such statement and such entries were not

made. The *Bark T. F. Whiton*, (1879) 10 Ben. (U. S.) 369, 23 Fed. Cas. No. 13,849.

Deductions. — The provisions of this section are inapplicable to cases embraced within the provisions of R. S. sec. 4604. The "deductions" referred to are deductions to be made from the wages to be paid, such as advances, money furnished during the voyage, supplies from the slop-chest, etc. The expenses occasioned by a desertion are not treated by the Act as "deductions" to be allowed the master. They are charges to the payment of which the wages forfeited are "in the first instance to be applied," and the "balance" only to be paid to the commissioner. The practical effect is, of course, the same by whatever term we characterize them. But the language of the section becomes significant when the question arises whether the "expenses" mentioned in the fifty-fifth section are embraced within the "deduction" spoken of in the twenty-third section of the Act of June 7, 1872. *Stevenson v. Hamilton*, 23 Fed. Cas. No. 13,415.

Sec. 4551. [*Certificate of discharge.*] Upon the discharge of any seaman, or upon payment of his wages, the master shall sign and give him a certificate of discharge, specifying the period of his service and the time and place of his discharge, in the form marked Table B in the schedule annexed to this Title; and every master who fails to sign and give to such seaman such certificate and discharge, shall, for each such offense, incur a penalty not exceeding fifty dollars. But whenever the master shall discharge his crew or any part thereof in any collection-district where no shipping-commissioner has been appointed, he may perform for himself the duties of such commissioner. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 267.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or

the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8. *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4552. [*Rules for settlement.*] The following rules shall be observed with respect to the settlement of wages:

First. Upon the completion, before a shipping-commissioner, of any discharge and settlement, the master or owner and each seaman, respectively, in the presence of the shipping-commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping-commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seamen assent to such settlement, or the settlement has been adjusted by the shipping-commissioner.

Second. Such release, so signed and attested, shall operate as a mutual discharge and settlement of all demands for wages between the parties thereto, on account of wages, in respect of the past voyage or engagement.

Third. A copy of such release, certified under the hand and seal of such shipping-commissioner to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

Fourth. In cases in which discharge and settlement before a shipping-commissioner are required, no payment, receipt, settlement, or discharge otherwise made shall operate as evidence of the release or satisfaction of any claim.

Fifth. Upon payment being made by a master before a shipping-commissioner, the shipping-commissioner shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 267.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8. *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

To what services applicable. — This section is intended to relate only to merchant seamen, and a contract to go as seaman between San Francisco and Pyramid Harbor, Alaska, and to work at the latter place during the season of that year as a fisherman, "or in any other capacity," is not, strictly speaking, such a contract as is contemplated by this section, and a settlement and release as provided therein is not necessarily binding. The *Domenico v. Alaska Packers' Assoc.*, (1901) 112 Fed. Rep. 560.

Appearance before commissioner. — It is not necessary that the master and seaman appear before the shipping commissioner at the same time. A proposition of settlement may be left with the commissioner by the

party making it, to be accepted or rejected by the other party when he appears before that officer, and a settlement and release made in that manner may be good. *Petterson v. Empire Transp. Co.*, (C. C. A. 1901) 111 Fed. Rep. 931; *The Pennsylvania*, (1899) 98 Fed. Rep. 744.

Release conclusive. — A release properly executed and attested under the provisions of sections 4549 and 4552, in the absence of fraud or coercion, is conclusive on all parties. *Petterson v. Empire Transp. Co.*, (C. C. A. 1901) 111 Fed. Rep. 931.

While the courts regard seamen as wards of the admiralty and protect them from unfair treatment, notwithstanding their own improvidence in signing away their rights, still seamen are recognized as men, and agreements which they make deliberately, intelligently, and voluntarily are to be enforced in their favor, and they are to be bound thereby the same as other competent parties to lawful contracts. *The Charles D. Lane*, (1901) 106 Fed. Rep. 746.

Not under seal. — The mutual release of wages by master and seaman before a shipping commissioner need not be under seal, and is conclusive if executed and attested as required, without fraud or coercion. *Rosenberg v. Doe*, (1888) 146 Mass. 193.

Sec. 4553. [*Certificate of character.*] Upon every discharge effected before a shipping-commissioner, the master shall make and sign, in the form given in the table marked "B," in the schedule annexed to this Title, a report of the conduct, character, and qualifications of the persons discharged; or may state in such form, that he declines to give any opinion upon such particulars, or upon any of them; and the commissioner shall keep a register of the same, and shall, if desired so to do by any seaman, give to him or indorse on his certificate of discharge a copy of so much of such report as concerns him. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 268.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or

the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

[V. PROTECTION AND RELIEF.]

Sec. 4554. [*Commissioner to act as arbiter.*] Every shipping-commissioner shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of parties. And any document under the hand and official seal of a commissioner purporting to be such submission or award, shall be prima facie evidence thereof. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 267.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of

Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, sec. 8, *supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

"An award by the shipping commissioner is not binding upon the parties unless made by authority of a submission in writing." The W. F. Babcock, (1898) 85 Fed. Rep. 978.

Sec. 4555. [*Examination of witnesses.*] In any proceeding relating to the wages, claims, or discharge of a seaman, carried on before any shipping-commissioner, under the provisions of this Title, such shipping-commissioner may call upon the owner, or his agent, or upon the master, or any mate, or any other member of the crew, to produce any log-books, papers, or other documents in their possession or power, respectively, relating to any matter in question in such proceedings, and may call before him and examine any of such persons, being then at or near the place, on any such matter; and every owner, agent, master, mate, or other member of the crew who, when called upon by the shipping-commissioner, does not produce any such books, papers, or documents, if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable cause for such default, be liable to a penalty of not more than one hundred dollars for each offense; and, on application made by the shipping-commissioner, shall be further punished, in the discretion of the court, as in other cases of contempt of the process of the court. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 267.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4556. [*Complaint that vessel is unseaworthy.*] If the first and second officers under the master or a majority of the crew of any vessel bound on any voyage shall, before the vessel shall have left the harbor, discover that the vessel is too leaky or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master shall, upon the request of the first and second officers under the master or such majority of the crew, forthwith apply to the judge of the district court of that judicial district, if he shall there reside, or if not, to some justice of the peace of the city, town, or place for the appointment of surveyors, as in section forty-five hundred and fifty-seven provided, taking with him two or more of the crew who shall have made such request; and any master refusing or neglecting to comply with these provisions shall be liable to a penalty of five hundred dollars. [R. S.]

This section was amended "so as to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 7, 30 Stat. L. 757.

The section originally read as follows:

"SEC. 4556. If the mate or first officer under the master, and a majority of the crew of any vessel, bound on a voyage to any foreign port, shall, after the voyage is begun, and before the vessel shall have left the land, discover that the vessel is too leaky, or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores, to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master shall, upon the request of the mate or other officer and such majority, forthwith proceed to or stop at the nearest or most convenient port or place where such inquiry can be made, and shall there apply to the judge of the district court of that judicial district, if he shall there reside, or if not, to some justice of the peace of the city, town, or place, taking with him two or more of the

crew who shall have made such request." Act of July 20, 1790, ch. 29, 1 Stat. L. 132.

It is provided by section 26 of the amending Act that section 7 "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

Right to leave unseaworthy ship.—The seamen are not authorized to determine the question as to the seaworthiness of the ship, and they cannot be relieved from their obligation to perform their contract under the shipping articles which they have signed on the ground of unseaworthiness. If they in good faith believe that it is unsafe for the ship to go to sea, they may demand a survey, which, if fairly made by competent persons, will be treated by the court as conclusive for the purpose of determining whether the men should or should not be discharged before the completion of the voyage. The C. F. Sargent, (1899) 95 Fed. Rep. 180.

See further notes under R. S. secs. 5359, 5360, *infra*, div. VII.

Sec. 4557. [*Proceedings upon examination of vessel.*] The judge, or justice, in a domestic port, shall, upon such application of the master or commander, issue his precept, directed to three persons in the neighborhood, the most experienced and skillful in maritime affairs that can be procured; and whenever such complaint is about the provisions one of such surveyors shall be a physician or a surgeon of the Marine Hospital Service, if such service is established at the place where the complaint is made. It shall be the duty of such surveyors to repair on board such vessel and to examine the same in respect to the defects and insufficiencies complained of, and make reports to the judge, or justice, as the case may be, in writing, under their hands or the hands of two of them, whether in any or in what respect the vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and upon such report the judge or justice shall adjudge and shall indorse on his report his judgment whether the vessel is fit to proceed on the intended voyage, and, if not, whether such repairs can be made or deficiencies supplied where the vessel then lies, or whether it is necessary for her to proceed to the nearest or most convenient place where such supplies can be made or deficiencies supplied; and the master and the crew shall, in all things, conform to the judgment. The master or commander shall, in the first instance, pay all the cost of such review, report, or judgment, to be taxed and allowed on a fair copy thereof, certified by the judge or justice. But if the complaint of the crew shall appear upon the report and judgment to have been without foundation, the master or commander, or the owner or consignee of such vessel, shall deduct the amount thereof, and of reasonable damages for the detention, to be ascertained by the judge or justice, out of the wages of the complaining seamen. [*R. S.*]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 8, 30 Stat. L. 757.

The section originally read as follows:

"SEC. 4557. The judge or justice shall, upon such application of the master or commander, issue his precept directed to three persons in the neighborhood, the most skillful in maritime affairs that can be procured, requiring them to repair on board such ves-

sel, and to examine the same in respect to the defects and insufficiencies complained of, and to make report to him. the judge or justice, as the case may be, in writing under their hands, or the hands of two of them, whether in any or in what respect the vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and

upon such report the judge or justice shall adjudge, and shall indorse on the report his judgment, whether the vessel is fit to proceed on the intended voyage; and if not, whether such repairs can be made or deficiencies supplied where the vessel then lies, or whether it is necessary for her to return to the port from whence she first sailed, to be there refitted; and the master and crew shall in all things conform to the judgment. The master or commander shall, in the first instance, pay all the costs of such view, report, and judgment, to be taxed and allowed on a fair copy thereof, certified by the judge or justice.

But if the complaint of the crew shall appear, upon the report and judgment, to have been without foundation, the master or commander, or the owner or consignee of such vessel, shall deduct the amount thereof, and of reasonable damages for the detention, to be ascertained by the judge or justice, out of the wages growing due to the complaining seamen." Act of July 20, 1790, ch. 29, 1 Stat. L. 132.

It is provided by section 26 of the amending Act that section 8, set out above, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

Sec. 4558. [*Penalty for refusal to proceed when vessel found seaworthy.*] If, after judgment that such vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations as may be directed, the seamen, or either of them, shall refuse to proceed on the voyage, he shall forfeit any wages that may be due him. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 9, 30 Stat. L. 757.

The section originally read as follows:

"SEC. 4558. If after judgment that such vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations as may be directed, the seamen, or either of them, shall refuse to proceed on the voyage, it shall be lawful for any justice of the peace to commit, by warrant under his hand and seal, every such seaman who refuses to the common jail of the county, there to remain without bail or mainprise until he has paid double the sum advanced to him at the time of subscribing the contract for the voyage, together with such reasonable costs as are

allowed by the justice, and inserted in the warrant; and the sureties of such seaman, in case he has given any, shall remain liable for such payment; nor shall any such seaman be discharged upon any writ of habeas corpus or otherwise, for want of any form of commitment, or other previous proceedings, until such sum is paid by him or his surety, if sufficient matter be made to appear, upon the return of such habeas corpus, and an examination then had, to detain him for the causes hereinbefore assigned." Act of July 20, 1790, ch. 29, 1 Stat. L. 132.

It is provided by section 26 of the amending Act that section 9, above set out, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

Sec. 4559. [*Appointment of inspectors by consul in foreign port.*] Upon a complaint in writing, signed by the first or second officer and a majority of the crew of any vessel while in a foreign port, that such vessel is in an unsuitable condition to go to sea because she is leaky or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been during the voyage, sufficient and wholesome; thereupon, in any of these or like cases, the consul, or a commercial agent who may discharge any duties of a consul, shall cause to be appointed three persons, of like qualifications with those described in section forty-five hundred and fifty-seven, who shall proceed to examine into the causes of complaint, and they shall be governed in all their proceedings and proceed as provided in section forty-five hundred and fifty-seven. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 10, 30 Stat. L. 757.

The section originally read as follows:

"SEC. 4559. Upon a complaint in writing, signed by the first, or the second and third officers and a majority of the crew, of any vessel while in a foreign port, that such vessel is in an unsuitable condition to go to sea, because she is leaky, or insufficiently sup-

plied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been, during the voyage, sufficient and wholesome, thereupon, in any of these or like cases, the consul or a commercial agent who may discharge any duties of a consul, shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to

examine into the causes of complaint, who shall, in their report, state what defects and deficiencies, if any, they find to be well founded, as well as what, in their judgment, ought to be done to put the vessel in order for the continuance of her voyage." Act of

July 20, 1840, ch. 48, 5 Stat. L. 396; Act of July 29, 1850, ch. 27, 9 Stat. L. 441.

It is provided by section 26 of the amending Act that section 10, above set out, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

Sec. 4560. [*Report of inspectors.*] The inspectors appointed by any consul or commercial agent, in pursuance of the preceding section, shall have full power to examine the vessel and whatever is aboard of her, so far as is pertinent to their inquiry, and also to hear and receive any other proofs which the ends of justice may require; and if, upon a view of the whole proceedings, the consul or other commercial agent is satisfied therewith, he may approve the whole or any part of the report, and shall certify such approval; or if he dissents, he shall certify his reasons for dissenting. [R. S.]

Act of July 20, 1840, ch. 48, 5 Stat. L. 396.

Sec. 4561. [*Discharge of seamen on account of unseaworthiness of vessel — penalty for sending unseaworthy ship to sea.*] The inspectors in their report shall also state whether in their opinion the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consular officer approves of such finding, he shall discharge such of the crew as request it, and shall require the payment by the master of one month's wages for each seaman over and above the wages then due, or sufficient money for the return of such of the crew as desire to be discharged to the nearest and most convenient port of the United States, or by furnishing the seamen who so desire to be discharged with employment on a ship agreed to by them. But if in the opinion of the inspectors the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall in a reasonable time remove or remedy the causes of complaint, then the crew shall remain and discharge their duty. If any person knowingly sends or attempts to send or is party to the sending or attempting to send an American ship to sea, in the foreign or coastwise trade, in such an unseaworthy state that the life of any person is likely to be thereby endangered, he shall, in respect of each offense, be guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars or by imprisonment not to exceed five years, or both, at the discretion of the court, unless he proves that either he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in an unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving that proof he may give evidence in the same manner as any other witness. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 11, 30 Stat. L. 758.

The section originally read as follows:

"Sec. 4561. The inspectors in their report shall also state whether, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident, and in case it was by neglect or design, and the consul or other commercial agent approves of such finding, he shall discharge such of the crew as require it, each

of whom shall be entitled to three months' pay in addition to his wages to the time of discharge; but if, in the opinion of the inspectors, the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall, in a reasonable time, remove or remedy the causes of complaint, then the crew shall remain and discharge their duty; otherwise they shall, upon their request, be discharged, and receive each one

month's wages in addition to their pay up to the time of discharge." Act of July 20, 1840, ch. 48, 5 Stat. L. 396.

It was amended by the Act of June 26, 1884, ch. 121, sec. 4, 23 Stat. L. 54, to read as follows:

"SEC. 4561. The inspectors in their report shall also state whether, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consular officer approves of such finding, he shall discharge such of the crew as request it, and shall require the payment by the master of one month's wages for

each seaman over and above the wages then due. But if, in the opinion of the inspectors, the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall, in a reasonable time, remove or remedy the causes of complaint, then the crew shall remain and discharge their duty."

It was again amended by the Act of Dec. 21, 1898, ch. 28, sec. 11, to read as given in the text. It is provided by section 26 of such amending Act that section 11, as above given, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

Sec. 4562. [*Payment of charges for inspection.*] The master shall pay all such reasonable charges for inspection under such complaint as shall be officially certified to him under the hand of the consul or commercial agent; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable damages for detention on that account as the consul or commercial agent directing the inquiry may officially certify. [R. S.]

Act of July 20, 1840, ch. 48, 5 Stat. L. 396.

Sec. 4563. [*Refusal to pay wages and charges — damages — penalty.*] Every master who refuses to pay such wages and charges shall be liable to each person injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for each offense. [R. S.]

Act of July 20, 1840, ch. 48, 5 Stat. L. 397.

Sec. 4564. [*Neglect to provide sufficient stores — penalty.*] Should any master or owner of any merchant vessel of the United States neglect to provide a sufficient quantity of stores to last for a voyage of ordinary duration to the port of destination, and in consequence of such neglect the crew are compelled to accept a reduced scale, such master or owner shall be liable to a penalty as provided in section forty-five hundred and sixty-eight of the Revised Statutes. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 12, 30 Stat. L. 758.

The section originally read as follows:

"SEC. 4564. [*Provisions.*] Every vessel belonging to a citizen of the United States, bound on a voyage across the Atlantic Ocean, shall, at the time of leaving the last port from whence she sails, have on board, well

secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship-bread, for every person on board such vessel, besides such other provisions, stores, and live-stock as shall by the master or passengers be put on board, and in like proportion for shorter or longer voyages." Act of July 20, 1790, ch. 29, 1 Stat. L. 135.

Sec. 4565. [*Examination of provisions.*] Any three or more of the crew of any merchant-vessel of the United States bound from a port in the United States to any foreign port, or being of the burden of seventy-five tons or upward, and bound from a port on the Atlantic to a port on the Pacific, or vice versa, may complain to any officer in command of any of the vessels of the United States Navy, or consular officer of the United States, or shipping-commissioner or chief officer of the customs, that the provisions or water for the use of the

crew are, at any time, of bad quality, unfit for use, or deficient in quantity. Such officer shall thereupon examine the provisions or water, or cause them to be examined; and if, on examination, such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall certify the same in writing to the master of the ship. If such master does not thereupon provide other proper provisions or water, where the same can be had, in lieu of any so certified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so certified to be insufficient in quantity, or uses any provisions or water which have been so certified as aforesaid to be of bad quality and unfit for use, he shall, in every such case, be liable to a penalty of not more than one hundred dollars; and upon every such examination the officers making or directing the same shall enter a statement of the result of the examination in the log-book, and shall send a report thereof to the district judge for the judicial district embracing the port to which such vessel is bound; and such report shall be received in evidence in any legal proceedings. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 269.
For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Withholding suitable food and nourishment punishable. See R. S. sec. 5347, *infra*, div. VII.

Sec. 4566. [*Forfeiture for false complaint.*] If the officer to whom any such complaint in regard to the provisions or the water is made certifies in such statement that there was no reasonable ground for such complaint, each of the parties so complaining shall forfeit to the master or owner his share of the expense, if any, of the survey. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 269.

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 13, 30 Stat. L. 758. The amendment consists in the substitution of the words "forfeit to the master or owner his share of the expense, if any, of the survey," in lieu of the words "be liable to forfeit to the master or owner, out of his wages, a sum not exceeding one

week's wages," appearing in the section as originally enacted.

It is provided by section 26 of the amending Act that section 13, being the section given in the text, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870. ¶

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4567. [*Permission to enter complaint.*] If any seamen, while on board any vessel, shall state to the master that they desire to make complaint, in accordance with the two preceding sections, in regard to the provisions or the water, to a competent officer, against the master, the master shall, if the vessel is then at a place where there is any such officer, so soon as the service of the vessel will permit, and if the vessel is not then at such a place, so soon after her first arrival at such place as the service of the vessel will permit, allow such seamen, or any of them, to go ashore, or shall send them ashore, in proper custody, so that they may be enabled to make such complaint; and shall, in default, be liable to a penalty of not more than one hundred dollars. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 269.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 728. [*Power to enforce awards of foreign consuls, etc., in certain cases.*] The district and circuit courts, and the commissioners of the circuit courts, shall have power to carry into effect, according to the true intent and meaning thereof, the award, or arbitration, or decree of any consul, vice-consul,

or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him by such consul, vice-consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge; application for the exercise of such power being first made to such court or commissioner by petition of such consul, vice-consul, or commercial agent. And said courts and commissioners may issue all proper remedial process, mesne and final, to carry into full effect such award, arbitration, or decree, and to enforce obedience thereto, by imprisonment in the jail or other place of confinement in the district in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing of such consul, vice-consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice-consul, or commercial agent: *Provided, however,* That the expenses of the said imprisonment, and maintenance of the prisoners, and the cost of the proceedings, shall be borne by such foreign government, or by its consul, vice-consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises, under the authority of the said courts and commissioners. [R. S.]

Act of Aug. 8, 1846, ch. 105, 9 Stat. L. 78.
See notes under JUDICIARY, vol. 4, p. 551.

Sec. 4568. [*Allowance for reduction of provisions.*] If, during a voyage, the allowance of any of the provisions which any seaman is entitled to under section forty-six hundred and twelve of the Revised Statutes is reduced except for any time during which such seaman willfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct either on board or on shore; or if it shall be shown that any of such provisions are, or have been during the voyage, bad in quality or unfit for use, the seaman shall receive, by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages:

First. If his allowance is reduced by any quantity not exceeding one-third of the quantity specified by law, a sum not exceeding fifty cents a day.

Second. If his allowance is reduced by more than one-third of such quantity, a sum not exceeding one dollar a day.

Third. In respect of bad quality, a sum not exceeding one dollar a day.

But if it is shown to the satisfaction of the court before which the case is tried that any provisions, the allowance of which has been reduced, could not be procured or supplied in sufficient quantities, or were unavoidably injured or lost, or if by reason of its innate qualities any article becomes unfit for use and that proper and equivalent substitutes were supplied in lieu thereof, the court shall take such circumstances into consideration and shall modify or refuse compensation, as the justice of the case may require. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 14, 30 Stat. L. 758.

The section originally read as follows:

"Sec. 4568. If, during a voyage, the allowance of any of the provisions which any seaman has, by his agreement, stipulated for,

is reduced, except in accordance with any regulations for reduction by way of punishment, contained in the agreement, and also for any time during which such seaman willfully, and without sufficient cause, refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on

board or on shore; or if it is shown that any of such provisions are, or have been during the voyage, bad in quality and unfit for use, the seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages:

"First. If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding fifty cents a day.

"Second. If his allowance is reduced by more than one-third of such quantity, a sum not exceeding one dollar a day.

"Third. In respect of bad quality, a sum not exceeding one dollar a day.

"But if it is shown to the satisfaction of the court before which the case is tried, that any provisions, the allowance of which has been reduced, could not be procured or supplied in sufficient quantities, or were unavoidably injured or lost, and that proper and equivalent substitutes were supplied in lieu thereof, in a reasonable time, the court shall take such circumstances into consideration, and shall modify or refuse compensation, as the justice of the case may require." Act of June 7, 1872, ch. 322, 17 Stat. L. 270.

It is provided by section 26 of the amending Act that section 14, set out in the text, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

General construction.—This law is remedial, and was enacted for a beneficent purpose, and while not to be enforced with undue severity should, nevertheless, be construed liberally, so as to give its humane purpose full and practical effect, and cause it to be respected and obeyed by ship owners and masters. *Schooner H. E. Thompson v. Martin*, (1900) 16 App. Cas. (D. C.) 222.

Laying in supply.—The master of a vessel—particularly of a sailing vessel traveling to localities and ports not much frequented by vessels and traders—must not only be adequately supplied with provisions for his crew to last the ordinary voyage, but he is under the duty of preparing reasonably, to some extent, for the exigencies and necessities of a longer voyage than is expected or is usual. *Petersen v. Cunningham Co.*, (1896) 77 Fed. Rep. 211.

Substitute for bread.—A surplus of meat or other provisions will not make up for a want of bread. *Petersen v. Cunningham Co.*, (1896) 77 Fed. Rep. 211; *Broux v. The Ivy*, (1894) 62 Fed. Rep. 600; *The Hermon*, (1870) 1 Lowell (U. S.) 515, 12 Fed. Cas. No. 6,411; *The Mary Paulina*, (1843) 1 Sprague (U. S.) 45, 16 Fed. Cas. No. 9,224.

A bread composed of one-third flour and two-thirds copra (dried coconut) is not a sufficient and proper substitute for the more nourishing and staple article of bread called for by the statutory schedule. *Petersen v. J. F. Cunningham Co.*, (1896) 77 Fed. Rep. 211.

Under the earlier Act of 1790 it seems that

flour cooked into good bread by the ship's cook and served out in that form may be a substitute for ship bread, though flour served out to the men would not be. *The Hermon*, (1870) 1 Lowell (U. S.) 515, 12 Fed. Cas. No. 6,411; *Poster v. Sampson*, (1849) 1 Sprague (U. S.) 182, 9 Fed. Cas. No. 4,982.

Where the crew had the full navy ration of meat, and a short allowance of bread and of other articles, like beans, rice, etc., they were held entitled to but one day's extra pay for each day's short allowance. *The Hermon*, (1870) 1 Lowell (U. S.) 515, 12 Fed. Cas. No. 6,411.

Where an insufficient quantity of bread was provided for a foreign voyage, the crew are entitled to extra wages if put on short allowance, though the immediate cause of the deficiency was the spoiling of part of the bread by sea peril. *The Hermon*, (1870) 1 Lowell (U. S.) 515, 12 Fed. Cas. No. 6,411.

Compelling crew to provide food.—Where a ship was lying in the Bay of Mobile four months waiting for cargo, and the usual supply of provisions from the ship's store was withheld, the crew being required to furnish themselves by taking oysters from the oyster-beds when the state of the weather permitted it to be done, and the supply being insufficient in quantity, they were held to be entitled to additional wages. *The John L. Dimmick*, (1858) 3 Ware (U. S.) 196, 13 Fed. Cas. No. 7,355.

Consent to allowances.—The master had a "method" of his own as to the allowance of provisions for the crew. On objection by the crew and a request for the statutory scale of allowances, the master agreed to comply therewith, but after a few days the crew asked for a return to the master's "method," which the latter agreed to if the crew would be "satisfied in the future and make no more complaints," which agreement was entered in the log book. It was held that this latter contract was one-sided, without consideration, and invalid, and would not prevent recovery of the extra wages on account of a reduction in the allowances provided by law. *Broux v. The Ivy*, (1894) 62 Fed. Rep. 600.

Accidental deficiency.—In order to subject the master or owner of the vessel to the payment of extra wages for short allowance, some order or command to that effect must have been given or there must have been some gross negligence in the master; an accidental or unintentional deficiency would not subject him to the penalty. *The Ship Elizabeth v. Rickers*, 2 Paine (U. S.) 291, 8 Fed. Cas. No. 4,353.

Mutinous crew.—Seamen might recover their wages and claims for short allowance on the voyage, although they had been guilty of mutinous and disobedient conduct, where they had afterwards returned to duty and been criminally prosecuted for the offense. *Hill v. The Triumph*, (1841) 12 Fed. Cas. No. 6,500.

Cause of failure.—Whether the failure arose through negligence or inadvertence is immaterial so far as the recovery of the penalty provided for by section 4568 is con-

cerned. The mere failure to furnish the crew with the scheduled allowance is actionable, and a recovery may be had unless it can be shown to the satisfaction of the court that any provisions the allowances of which had been reduced could not be procured or supplied in sufficient quantities or were unavoidably lost or injured, and that proper and equivalent substitutes were supplied in lieu thereof in a reasonable time, in which event the court may modify or refuse compensation as the justice of the case may require. *Petersen v. Cunningham Co.*, (1896) 77 Fed. Rep. 211.

Detention, etc.—Where a detention occurred from stress of weather and not from design, wilfulness, or negligence, and where a short allowance of provisions was due to the delivery of a part of the provisions to a crew in distress, an ample supply of provision having been taken at the beginning of the voyage, the owners are not bound to pay extra wages for such short allowance. *Burdett v. Williams*, (1886) 27 Fed. Rep. 113.

Prolonged voyage.—Where the voyage is prolonged beyond all reasonable expectation the master will be justified, when no additional supplies can be procured, in reducing the allowance of food. *Petersen v. Cunningham Co.*, (1896) 77 Fed. Rep. 211; *Ferrara v. The Barque Talent*, (1838) *Crabbe* (U. S.) 216, 8 Fed. Cas. No. 4,745.

Change of route.—A ship sailed from Hong Kong provisioned for a voyage to New York by the way of the Cape of Good Hope, which voyage is usually made in from one hundred and thirty to one hundred and eighty days. Shortly after leaving Hong Kong, she was driven by storms several hundred miles eastward, and the master changed his route to go by the way of Cape Horn, which was from five thousand to seven thousand miles farther. The vessel was out two hundred and sixty days, the men were put on short allowance and suffered severely from scurvy, the master making no effort to stop en route for additional supplies. It was held that the seamen could recover their actual pecuniary damages, taking account of the statutory compensation for short allowance. *The T. F. Oakes*, (1897) 82 Fed. Rep. 759.

Recovery.—Compensation for short allowance is recovered as wages, and a general form of pleading is sufficient to admit evidence of the right, if not excepted to before trial. *Piehl v. Balchen*, (1844) *Olc. Adm.* 24, 19 Fed. Cas. No. 11,137.

Joinder of parties.—All the crew may unite in a suit for double wages because of a short allowance of bread. *The Bark Childe Harold*, (1846) *Olc. Adm.* 275, 5 Fed. Cas. No. 2,676.

Proof of substantial failure to observe the requirements of the law with such reasonable particularity as to the number of days as will enable the court to assess the compensation with reasonable certainty is all that is

necessary, without showing a failure from day to day, especially when the master and the owner knew of the scale in effect at the time and the seamen did not. *Schooner H. E. Thompson v. Martin*, (1900) 16 App. Cas. (D. C.) 222.

Costs.—When one of the libelants unites a demand for contract wages unpaid him with his claim for short allowance, and obtains a decree for those wages, the court will only allow him proportionate costs against the vessel on that demand, not including witness fees to his colibelants, and will order full costs against him in connection with his colibelants upon the other branch of the litigation. *The Bark Childe Harold*, (1846) *Olc. Adm.* 275, 5 Fed. Cas. No. 2,676.

If the libelants fail in maintaining their action, and it appears there was no colorable cause for bringing it, they will be charged with full costs of suit. *The Bark Childe Harold*, (1846) *Olc. Adm.* 275, 5 Fed. Cas. No. 2,676.

Action for damages.—The recovery of the penalty does not necessarily preclude the seaman from recovering damages, also, for a deficiency of other provisions. *Collins v. Wheeler*, (1850) 1 *Sprague* (U. S.) 188, 6 Fed. Cas. No. 3,018.

Under the earlier Act of July 20, 1790, section 9, the claim for additional wages was not founded on the mere fact that the crew was put on short allowance, but on the neglect or omission of the master to take on the quantity and species of provisions required by that Act. The two circumstances of deficiency in the quantity or quality of the provisions, and a short allowance, must have concurred in order to entitle the crew to the remedy provided by the section. *Ferrara v. The Barque Talent*, (1838) *Crabbe* (U. S.) 216, 8 Fed. Cas. No. 4,745; *The Ship Elizabeth v. Rickers*, 2 *Paine* (U. S.) 291, 8 Fed. Cas. No. 4,353; *The Bark Childe Harold*, (1846) *Olc. Adm.* 275, 5 Fed. Cas. No. 2,676; *The Elizabeth Frith*, (1831) *Blatchf. & H. Adm.* 195, 8 Fed. Cas. No. 4,361; *Piehl v. Balchen*, (1844) *Olc. Adm.* 24, 19 Fed. Cas. No. 11,137; *The John L. Dimmick*, (1858) 3 *Ware* (U. S.) 196, 13 Fed. Cas. No. 7,355.

When the crew is put on short allowance without necessity, in a case not within the Act of Congress, there is a wrong in breach of contract, and a remedy will be given by a court of admiralty in the form of additional wages. For other cases construing earlier Act, see *The John L. Dimmick*, (1858) 3 *Ware* (U. S.) 196, 13 Fed. Cas. No. 7,355; *The Hermon*, (1870) 1 *Lowell* (U. S.) 515, 12 Fed. Cas. No. 6,411; *Collins v. Wheeler*, (1850) 1 *Sprague* (U. S.) 188, 6 Fed. Cas. No. 3,018.

Criminal prosecution for short allowance. See R. S. sec. 5347, *infra*, div. VII.

Scale of rations.—See R. S. sec. 4612, *infra*, div. VIII.

Sec. 4569. [Medicines.] Every vessel belonging to a citizen of the United States, bound from a port in the United States to any foreign port, or being of the burden of seventy-five tons or upward, and bound from a port on the

Atlantic to a port on the Pacific, or vice versa, shall be provided with a chest of medicines; and every sailing-vessel bound on a voyage across the Atlantic or Pacific Ocean, or around Cape Horn, or the Cape of Good Hope, or engaged in the whale or other fisheries, or in sealing, shall also be provided with, and cause to be kept, a sufficient quantity of lime or lemon juice, and also sugar and vinegar, or other anti-scorbutics, to be served out to every seaman as follows: The master of every such vessel shall serve the lime or lemon juice, and sugar and vinegar, to the crew, within ten days after salt provisions mainly have been served out to the crew, and so long afterward as such consumption of salt provisions continues; the lime or lemon juice and sugar daily at the rate of half an ounce each per day; and the vinegar weekly, at the rate of half a pint per week for each member of the crew. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 270.
For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following *supra*, p. 850.

This section, and sections 4572 and 4573, R. S., prescribe a statutory duty in addition to the duty imposed upon shipowners by all maritime nations to provide proper medical treatment and attendance for seamen falling ill or suffering injury in the service of the ship. *The Iroquois*, (1903) 194 U. S. 240.

Provisions mandatory.—The provisions of this statute are mandatory, and the captain will be liable to the infliction of a fine if convicted of an omission to comply with his duty in respect to the serving of lime juice, even though the omission should be followed by no ill consequence to the crew. *The Rence*, (1890) 46 Fed. Rep. 805.

The consent of the crew to a violation of the positive provisions of this law can in no respect modify the master's liability for the offense, nor does it affect the right of the crew if their health is impaired. *The Rence*, (1890) 46 Fed. Rep. 805.

The fact that the crew preferred coffee to lime juice will not excuse the captain for a failure to serve lime juice. *The Rence*, (1890) 46 Fed. Rep. 805.

Antiscorbutics must be served out.—Where there were limes on board sufficient to last the entire voyage, yet it is not made to appear that the master ever served the crew with them, and even though the crew might have been free to help themselves whenever they chose or felt inclined to do so, this would not constitute a compliance with the provisions of this section, as it is the imperative duty of the master to supply the crew with a regular daily allowance as provided by the section. *Petersen v. Cunningham Co.*, (1896) 77 Fed. Rep. 211.

Liability for injury by scurvy.—Where the statutory requirements with regard to lime juice are disregarded and scurvy appears among the crew, in the absence of proof or any reason to suspect that the disease had been contracted by the men on a previous voyage, the ship should be held liable

for the damage sustained by the men by reason of the disease. *The Rence*, (1890) 46 Fed. Rep. 805.

The expense of caring for a sick seaman in the course of the voyage is a charge on the ship by the maritime law; and in this charge are included not only medicines and medical advice, but nursing, diet, and lodging, if the seaman be carried ashore. *Harden v. Gordon*, (1823) 2 Mason (U. S.) 541, 11 Fed. Cas. No. 6,047.

The Act of Congress for the regulation of seamen, etc., has not changed the maritime law, except so far as respects medicines and medical advice, when there is a proper medicine chest with medical directions on board the vessel. The charges of nursing and lodging are not affected by the Act. *Harden v. Gordon*, (1823) 2 Mason (U. S.) 541, 11 Fed. Cas. No. 6,047.

The Court of Admiralty has jurisdiction to enforce the payment of these expenses by a libel, for they are in the nature of additional wages during sickness. *Harden v. Gordon*, (1823) 2 Mason (U. S.) 541, 11 Fed. Cas. No. 6,047.

Payment for medical services.—An answer averring in general terms that a vessel was supplied with a medicine chest, according to law, is not, of itself, sufficient evidence to discharge a master from his liability for a physician's bill for attendance upon a sick seaman. An express promise by a sick seaman to pay the amount of such bill is without consideration, and void. *Freeman v. Baker*, (1833) Blatchf. & H. Adm. 372, 9 Fed. Cas. No. 5,084.

A stipulation that the seamen shall pay for medical advice and medicines without any condition that there shall be a suitable medicine chest, etc., is void, as contrary to the policy of the Act of Congress. *Harden v. Gordon*, (1823) 2 Mason (U. S.) 541, 11 Fed. Cas. No. 6,047.

The *onus probandi* in respect to the sufficiency of the medicine chest lies on the owner. *Harden v. Gordon*, (1823) 2 Mason (U. S.) 541, 11 Fed. Cas. No. 6,047.

Sec. 4570. [*Penalty for failure to keep medicines.*] If, on any such vessel, such medicines, medical stores, lime or lemon juice, or other articles, sugar, and vinegar, as are required by the preceding section, are not provided

and kept on board, as required, the master or owner shall be liable to a penalty of not more than five hundred dollars; and if the master of any such vessel neglects to serve out the lime or lemon juice, and sugar and vinegar in the case and manner directed, he shall for each such offense be liable to a penalty of not more than one hundred dollars; and if any master is convicted in either of the offenses mentioned in this section, and it appears that the offense is owing to the act or default of the owner, such master may recover the amount of such penalty, and the costs incurred by him, from the owner. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 270.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following *supra*, p. 850.

The penalty provided for in section 4568 cannot be made applicable by implication to section 4569. The former statute relates exclusively to the failure of the master or owners to supply the crew with the provisions stipulated for in the shipping articles, while the latter statute relates only to the failure of the master to serve the crew with antiscorbutics, and the failure to have on board a medicine chest, medical stores, lime

juice, etc. *Petersen v. Cunningham Co.*, (1896) 77 Fed. Rep. 211

Recovery of penalty.—An information as in the nature of an action of tort will lie by the United States to recover a penalty under this section. *U. S. v. Elliott*, (1879) 25 Int. Rev. Rec. 319, 25 Fed. Cas. No. 15,043.

This penalty does not inure to the benefit of the crew; nor is it provided that they shall recover any penalty in the way of additional wages for the master's omission in this respect. *Petersen v. Cunningham Co.*, (1896) 77 Fed. Rep. 211.

Sec. 4571. [Weights and measures.] Every master shall keep on board proper weights and measures for the purpose of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles, in the presence of a witness, whenever any dispute arises about such quantities, and in default shall, for every offense, be liable to a penalty of not more than fifty dollars. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 270.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following *supra*, p. 850.

Sec. 4572. [Clothing and fuel.] Every vessel bound on any foreign voyage exceeding in length fourteen days shall also be provided with at least one suit of woollen clothing for each seaman, and every vessel in the foreign or domestic trade shall provide a safe and warm room for the use of seamen in cold weather. Failure to make such provision shall subject the owner or master to a penalty of not less than one hundred dollars. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 15, 30 Stat. L. 759. The section originally read as follows:

"Sec. 4572. Every vessel bound on any foreign voyage shall also be provided with at least one suit of woollen clothing for each seaman, for use during the winter months; and every such vessel shall be provided with fuel and a safe and suitable room in which a fire can be kept for the use of seamen." Act of June 7, 1872, ch. 322, 17 Stat. L. 270.

It is provided by section 26 of the amending Act that section 15, as above set out, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following *supra*, p. 850.

Effect of failure.—The failure of the master of a vessel to provide a safe and warm room as provided by this section, after complaint made by the crew, will justify the seamen in leaving the vessel and recovering their wages for the time served. *The Ida McKay*, (1900) 99 Fed. Rep. 1002.

Necessity of complaint.—Seamen are not justified in leaving a vessel because the fore-castle where they slept was not heated and made comfortable as required by existing laws, where no complaint or request respecting that matter was made to the captain. *The C. F. Sargent*, (1899) 95 Fed. Rep. 180.

SEC. 11. [Slop-chest and contents.] That every vessel mentioned in section forty-five hundred and sixty-nine of the Revised Statutes shall also be provided

with a slop-chest, which shall contain a complement of clothing for the intended voyage for each seaman employed, including boots or shoes, hats or caps, under clothing and outer clothing, oiled clothing, and everything necessary for the wear of a seaman; also a full supply of tobacco and blankets. Any of the contents of the slop-chest shall be sold, from time to time, to any or every seaman applying therefor, for his own use, at a profit not exceeding ten per centum of the reasonable wholesale value of the same at the port at which the voyage commenced. And if any such vessel is not provided, before sailing, as herein required, the owner shall be liable to a penalty of not more than five hundred dollars. The provisions of this section shall not apply to vessels plying between the United States and the Dominion of Canada, Newfoundland, the Bermuda Islands, the Bahama Islands the West Indies, Mexico and Central America. [23 Stat. L. 56.]

This is from the Act of June 26, 1884, ch. 121, "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes."

See following provisions in the text.

Articles sold to seamen. — The master will not be allowed to charge the seamen for articles sold to them during the voyage in excess of an advance of ten per cent. over the prices actually paid for them by the master. The Edwin, (1885) 23 Fed. Rep. 256.

SEC. 13. [*Exceptions as to slop-chests.*] That section eleven of "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying-trade, and for other purposes," approved June twenty-sixth, eighteen hundred and eighty-four, shall not be construed to apply to vessels engaged in the whaling or fishing business. [24 Stat. L. 82.]

This is from the Act of June 19, 1886, ch. 421, "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes."

Sec. 4573. [*List of crew to be delivered to collector.*] Before a clearance is granted to any vessel bound on a foreign voyage or engaged in the whale-fishery, the master thereof shall deliver to the collector of the customs a list containing the names, places of birth and residence, and description of the persons who compose his ship's company; to which list the oath of the captain shall be annexed, that the list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents. [R. S.]

Act of Feb. 28, 1803, ch. 9, 2 Stat. L. 203;
Act of April 4, 1840, ch. 6, 5 Stat. L. 370.

Fees abolished. — See Act of June 19, 1886, ch. 421, sec. 1, under SHIPPING AND NAVIGATION.

"Foreign voyage." — The terminus of a

voyage determines its character; if it be within the limits of foreign jurisdiction, it is a foreign voyage and not otherwise. *Taber v. U. S.*, (1839) 1 Story (U. S.) 1, 23 Fed. Cas. No. 13,722.

Sec. 4574. [*Certificate to list.*] In all cases of private vessels of the United States sailing from a port in the United States to a foreign port, the list of the crew shall be examined by the collector for the district from which the vessel shall clear, and, if approved of by him, shall be certified accordingly. No person shall be admitted or employed on board of any such vessel unless his name shall have been entered in the list of the crew, approved and certified by the collector for the district from which the vessel shall clear. The collector, before he delivers the list of the crew, approved and certified, to the master

or proper officer of the vessel to which the same belongs, shall cause the same to be recorded in a book by him for that purpose to be provided, and the record shall be open for the inspection of all persons, and a certified copy thereof shall be admitted in evidence in any court in which any question may arise under any of the provisions of this Title. [R. S.]

Act of March 3, 1813, ch. 42, 2 Stat. L. 809.

Irregular shipment.—No indictment lies against a master of a ship for discharging

irregularly, in a foreign port, a seaman shipped irregularly in the United States. (1856) 7 Op. Atty-Gen. 730.

Sec. 4575. [*Rules as to list of crew.*] The following rules shall be observed with reference to vessels bound on any foreign voyage:

First. The duplicate list of the ship's company, required to be made out by the master and delivered to the collector of the customs, under section forty-five hundred and seventy-three, shall be a fair copy in one uniform handwriting, without erasure or interlineation.

Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping-articles, containing the names of the crew, which shall be written in a uniform hand, without erasures or interlineations.

Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners.

Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for each offense.

Sixth. It shall be the duty of the boarding-officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury and to the United States attorney in his district. [R. S.]

Act of July 20, 1840, ch. 48, 5 Stat. L. 394, 395, 397.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 252, by striking out after the words, "Second. It shall be the duty of the owners of every such vessel to obtain from the," the words "shipping commissioner, or officer acting as such in," appearing in the section as originally enacted, and inserting in lieu thereof the words "collector of the customs of," as above given.

Alterations.—In *The Richard Vaux*. (1884) 20 Fed. Rep. 654, it was held that while this

provision was not enforced as an express statute as respects a vessel in the coastwise trade, as by the Act of June 9, 1874, ch. 260, such vessels were excepted from the provisions of the statute, yet, however, the principle of the statute being a salutary one should be followed as a sound rule where the evidence as to an alteration of the rate of wages is conflicting; and where the evidence was evenly balanced as to an alteration reducing the seamen's wages, and the alteration was not otherwise satisfactorily explained, the larger rate should be allowed.

Immaterial erasures.—The provision in

regard to the erasures in shipping articles applies to alterations which would vary their effect in respect to seamen. Immaterial

erasures will be disregarded. The Schooner *Eagle*, (1846) Olc. Adm. 232, 8 Fed. Cas. No. 4,233.

Sec. 4576. [*Return of seamen — production of crew list and crew — penalty for failure.*] The master of every vessel bound on a foreign voyage or engaged in the whale fishery shall exhibit the certified copy of the list of the crew to the first boarding officer at the first port in the United States at which he shall arrive on his return, and also produce the persons named therein to the boarding officer, whose duty it shall be to examine the men with such list and to report the same to the collector; and it shall be the duty of the collector at the port of arrival, where the same is different from the port from which the vessel originally sailed, to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. For each failure to produce any person on the certified copy of the list of the crew the master and owner shall be severally liable to a penalty of four hundred dollars, to be sued for, prosecuted, and disposed of in such manner as penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties; but such penalties shall not be incurred on account of the master not producing to the first boarding officer any of the persons contained in the list who may have been discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew, nor on account of any such person dying or absconding or being forcibly impressed into other service of which satisfactory proof shall also be exhibited to the collector. [R. S.]

This section was amended "to read as" above by the Act of March 3, 1897, ch. 399, sec. 3, 29 Stat. L. 688.

The section originally read as follows:

"Sec. 4576. The master of every vessel bound on a foreign voyage or engaged in the whale fishery, shall enter into bond, with sufficient security, in the sum of four hundred dollars, that he shall exhibit the certified copy of the list of the crew, to the first boarding-officer, at the first port in the United States at which he shall arrive on his return, and also produce the persons named therein to the boarding-officer: whose duty it shall be to examine the men with such list, and to report the same to the collector; and it shall be the duty of the collector at the port of arrival, where the same is different from the port from which the vessel originally sailed, to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. But such bond shall not be forfeited on account of the master not producing to the first boarding-officer any of the persons contained in the list, who may be discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew; nor on account of any such person dying or absconding, or being forcibly impressed into other service, of which satisfactory proof shall be then also

exhibited to the collector." Act of Feb. 28, 1803, ch. 9, 2 Stat. L. 203.

Vessel sold abroad. — This section does not embrace the case of a vessel sold in a foreign port, and which does not return to the United States. *Montell v. U. S.*, (1840) Taney (U. S.) 24, 17 Fed. Cas. No. 9,723.

Seaman separated from vessel. — This section does not extend to cases where the seaman is lawfully separated from the ship, or is separated from her without the fault of the master or owner. It applies to those cases only where the vessel returns to a port of the United States; to cases where the seamen continue subject to the lawful authority of the master, and where it was in his power to bring them home. *Montell v. U. S.*, (1840) Taney (U. S.) 24, 17 Fed. Cas. No. 9,723.

Foreigners shipped abroad. — This section, so far as it is applicable to the return of seamen, does not apply to the case of foreigners shipped in their own country for a distinct voyage or part of voyage ending in their port of shipment. *U. S. v. Parsons*, (1866) 1 Lowell (U. S.) 107, 27 Fed. Cas. No. 16,002.

Discharge by consent of consul. — Where a master procures the discharge of a seaman by a United States consul, in a foreign port, if any deceit or collusion has been practised by the master in obtaining the discharge, he can claim no benefit or immunity under it. When there is no evidence of improper conduct on the part of the master in obtaining a seaman's discharge by a consul, and it ap-

pears that the consul has proceeded fairly, and on clear *prima facie* proofs has ordered the seaman to be discharged for criminal conduct, such discharge itself is a bar to any continuing claim for wages which might be enforced if the seaman's connection with the vessel still subsisted. The propriety of the consul's interference is to be determined upon the facts before him, and not by the case which may be afterwards shown upon a trial. *Tingle v. Tucker*, (1849) Abb. Adm. 519, 23 Fed. Cas. No. 14,057.

The certificate of the consul to excuse the

master under the proviso of this Act must state that the seamen were left in a foreign port with his consent. A certificate that they were left in a hospital unable to return, and that the master had paid for their maintenance, and left the amount of their wages, was held insufficient, and parol evidence of the consent of the consul or seamen inadmissible. *U. S. v. Hatch*, (1824) 1 Paine (U. S.) 336, 26 Fed. Cas. No. 15,325.

Foreign voyage. — See note to R. S. sec. 4573, *supra*, p. 898.

Sec. 4577. [*Return of seamen.*] It shall be the duty of the consuls, vice-consuls, commercial agents, and vice-commercial agents, from time to time, to provide for the seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen shall, if able, be bound to do duty on board the vessels in which they may be transported, according to their several abilities. [R. S.]

Act of Feb. 28, 1803, ch. 9, 2 Stat. L. 204.

Duties of consular officers in relation to seamen. See further, DIPLOMATIC AND CONSULAR OFFICERS, vol. 2, pp. 800, 805.

Forcible abandonment of officer or mariner in foreign port. See SHIPPING AND NAVIGATION.

Deduction from wages. — Where a U. S. consul-general has provided shipwrecked, destitute seamen with food, clothing, and passage to a port in this country, the amount so expended should not be deducted from the wages of such seamen. (1894) 21 Op. Atty-Gen. 25.

Liability of consul. — The crew of an American vessel wrecked in the South Pacific Ocean were supplied with necessary clothing by a United States consul, who on learning that wages were due them, applied to the master of the vessel to pay for the

clothing out of the wages due, which the latter did. On their arrival in the United States, the crew brought suit against the owners of the wrecked vessel for their wages, and recovered a judgment therefor. It was advised that such owners had no valid claim against the United States for the money paid by the master, as above; that their remedy, if any they had, was against the consul and the sureties on his bond. (1887) 19 Op. Atty-Gen. 22.

Seaman to do duty. — Where a distressed American seaman was sent home on board of an American vessel by the consul from a foreign country, it was held that he was bound to do duty as a seaman, when called upon by the mate, although his passage had been paid by the American consul. *U. S. v. Salisbury*, (1843) 2 N. Y. Leg. Obs. 53, 27 Fed. Cas. No. 16,214.

Sec. 4578. [*Transportation of destitute seamen to United States — penalty for refusal.*] All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding ten dollars for each person for voyages of not more than thirty days, and not exceeding twenty dollars for each person for longer voyages, as may be agreed between the master and the consular officer when the transportation is by a sailing vessel; and the regular steerage-passenger rate, not to exceed two cents per mile, when the transportation is by steamer; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall be paid as the First Comptroller of the Treasury shall deem proper. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of one hundred dollars for each seaman so refused. The certificate of any such con-

sular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage or to take any seaman having a contagious disease. [R. S.]

This section was amended "so as to read as" above by the Act of June 26, 1884, ch. 121, sec. 9, 23 Stat. L. 55, and the Act of June 19, 1886, ch. 421, sec. 18, 24 Stat. L. 83.

The section originally read as follows:

"SEC. 4578. All masters of vessels belonging to citizens of the United States, and bound to some port of the same, are required to take such destitute seamen on board of their vessels, at the request of the consuls, vice-consuls, commercial agents, or vice-commercial agents, respectively, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding ten dollars for each person, as may be agreed between the master and the consul or officer. Every such master who refuses the same on the request or order of such consul or officer shall be liable to the United States in a penalty of one hundred dollars for each seaman so refused. The certificate of any such consul or officer, given under his hand and official seal, shall be presumptive evidence of such refusal, in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than two men to every one hundred tons burden of the vessel, on any one voyage." Act of Feb. 28, 1803, ch. 9, 2 Stat. L. 204.

It was amended by the Act of 1884, above noted, to read as set forth in the text, except that the Act of 1886, above noted, added after the words "and the consular officer" the words "when the transportation is by a sailing vessel; and the regular steerage-passenger rate, not to exceed two cents per mile, when the transportation is by steamer," and at the end the words "or to take any seaman having a contagious disease," as above given.

Foreigners while employed as seamen in

the merchant-ships of the United States are deemed to be "mariners and seamen of the United States," within the language and policy of this section. *Matthews v. Offley*, (1837) 3 Sumn. (U. S.) 115, 16 Fed. Cas. No. 9,290.

American seamen shipped on a foreign vessel, and in consequence of its being wrecked left in a foreign port destitute, were held entitled to the relief provided in the Act of Feb. 28, 1803, sec. 4. (1852) 5 Op. Atty-Gen. 547.

Seamen on board vessels of war are not entitled to pecuniary assistance from consuls abroad, under the Act of Feb. 28, 1803. The moneys in the hands of the secretary of state were raised for the wages of merchant seamen only, and should be applied only for the relief of that class of seamen which has contributed to the fund. (1841) 3 Op. Atty-Gen. 683; (1841) 3 Op. Atty-Gen. 685.

Destitute deserters.—The fact of desertion from an American ship—whether she be in port or not at the time when the seaman becomes destitute—does not supersede the authority of the consul to require another American ship to bring him to the United States. *Matthews v. Offley*, (1837) 3 Sumn. (U. S.) 115, 16 Fed. Cas. No. 9,290.

Certificate of refusal.—The certificate of the consul is *prima facie* evidence of the refusal of the master to take the seaman on board and of all the facts stated in the enacting clause which are necessary to bring the case within the penalty. *Matthews v. Offley*, (1837) 3 Sumn. (U. S.) 115, 16 Fed. Cas. No. 9,290.

The action for the penalty must be brought in the name of the United States, and not of the consul or vice-consul. *Matthews v. Offley*, (1837) 3 Sumn. (U. S.) 115, 16 Fed. Cas. No. 9,290.

Sec. 4579. [*Additional allowance for transportation of destitute seamen.*] Whenever distressed seamen of the United States are transported from foreign ports where there is no consular officer of the United States, to ports of the United States, there shall be allowed to the master or owner of each vessel, in which they are transported, such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the First Comptroller of the Treasury. [R. S.]

Act of Feb. 28, 1811, ch. 28, 2 Stat. L. 651.

Sec. 4580. [*Discharge of seaman and payment of wages.*] Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any act of Congress or according to the general principles

or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman; but no payment of extra wages shall be required by any consular officer upon such discharge of any seaman except as provided in this act. [R. S.]

This section was amended "so as to read as" above by the Act of June 26, 1884, ch. 121, sec. 2, 23 Stat. L. 54.

The section originally read as follows:

"SEC. 4580. [*Extra wages on discharge.*] Upon the application of any seaman to a consular officer for a discharge, if it appears to such officer that he is entitled to his discharge under any act of Congress, or according to the general principles or usages of maritime law, as recognized in the United States, the officer shall discharge such seaman; and shall require from the master of the vessel from which such discharge shall be made, the payment of three months' extra wages, over and above the wages which may then be due to such seaman. When, however, after a full hearing of both parties, the cause of discharge is found to be the misconduct of the seaman, the consular officer may remit so much of the extra wages as would be, by section forty-five hundred and eighty-four, payable to the seaman." Act of Aug. 18, 1856, ch. 127, 11 Stat. L. 62; Act of March 3, 1873, ch. 243, 17 Stat. L. 580.

See note to R. S. sec. 4577, *supra*.

Foreign seamen. — In the case of foreigners shipped abroad as such, and domiciled in a foreign country, the consul need not be formally applied to to ratify their discharge on the termination of their contract of shipment. *U. S. v. Parsons*, (1866) 1 Lowell (U. S.) 107, 27 Fed. Cas. No. 16,002.

Justification for discharge. — Where, in answer to a libel for wages, the claimants set up a discharge of libellant in a foreign port, by order of the consul, it is incumbent on them to set forth in their answer a state of facts justifying the discharge relied on, and to support the allegations by adequate proof. *The Atlantic*, (1849) Abb. Adm. 451, 2 Fed. Cas. No. 620.

Drunkenness. — The master of an American steamship requested the discharge of a seaman, the latter joining in the request. The log book showed that on a certain day the sailor refused to work, alleging sickness, which proved to be intoxication, and the following day he was unable to work from consequent illness. For these reasons the master deducted from his wages four and eight days' pay respectively. It was held that the consul-general was justified in discharging the seaman. (1898) 22 Op. Atty.-Gen. 212.

Shirking and insolence. — A premeditated and persistent shirking and slighting of duty, or a deliberate and continued attitude of insolence and defiance by a seaman, is a sufficient cause for discharge, particularly when it appears that the seaman thereby intends to coerce or constrain the master in the discharge of his duty. *The T. F. Oakes*, (1888) 36 Fed. Rep. 442.

Effect of repentance. — The master may discharge a seaman from the vessel before the termination of the voyage for a legal cause, but not for slight offenses nor for a single offense unless of a very aggravated character. If he has sufficient cause for discharging him, and the seaman repents and offers amends and to return to duty, the master is bound to receive him. *Hutchinson v. Coombs*, (1825) 1 Ware (U. S.) 58, 12 Fed. Cas. No. 6,955.

Subsequent wages. — A consular officer of the United States may discharge a seaman, on the application of the master, for any cause sanctioned by the usages and principles of maritime law, as recognized in the United States, on the payment of the wages then earned; and all claim for wages for the remainder of the voyage is thereby cut off and barred. *The T. F. Oakes*, (1888) 36 Fed. Rep. 442.

Review of consul's action. — The action of a consul in the exercise of the discretion given him by sections 4580, 4581, 4583, and 4584, respecting the discharge of seamen in a foreign port, is not reviewable otherwise than by some competent court. (1879) 16 Op. Atty.-Gen. 268.

Forced discharge without hearing. — Where a hearing has been on the merits, on the demand of the master or the seaman, and a proper record preserved of the consul's decision and judgment discharging the seaman, it is ordinarily entitled to full credence. But where there was no hearing, no judgment, no record, a forced discharge, with no pay beyond the day of discharge, is inhuman and opposed to the policy and the statutes of this country (R. S. sec. 4580), and it is no defense that it was abetted by the irregular action of the consular office. *The Sachem*, (1894) 59 Fed. Rep. 790.

Intimidation. — Where a seaman is induced to assent to his discharge upon payment of a nominal sum from just apprehension of future ill treatment arising from the misconduct of the master, such assent is given under a species of duress and is no bar to the recovery of the amount actually due to him at the time of his discharge. If subsequently to such discharge the seaman ships in another vessel at an advanced lay, it is not a correct principle in settling his claim against the first ship to reckon full wages for the entire voyage of such ship, and to deduct therefrom his earnings in the second ship during the time. The amount due at the time of his discharge from the first ship is an absolute debt. *Bates v. Seabury*, (1858) 1 Sprague (U. S.) 433, 2 Fed. Cas. No. 1,104.

A consular certificate of the discharge of a seaman on the application of the master is only *prima facie* evidence of the material

facts stated therein; and in a suit for wages for the unperformed part of the voyage by the discharged seaman, it may be shown that such discharge was illegal or without sufficient cause. *The T. F. Oakes*, (1888) 36 Fed. Rep. 442; *Hutchinson v. Coombs*, (1825) 1 Ware (U. S.) 58, 12 Fed. Cas. No. 6,955.

The certificate of the consul that the discharge of a seaman was granted upon the seaman's consent is conclusive upon that fact unless it is shown that the conduct of the consul was corrupt or fraudulent. *Lamb v. Briard*, (1848) Abb. Adm. 367, 14 Fed. Cas. No. 8,010.

Collection of wages by consul.—Where a consul has collected extra wages of the master of a vessel in a foreign port, or requested collection of such extra wages, on the arrival of the vessel in the United States it is not competent for the secretary of the treasury, or any bureau of the treasury department, in the examination of the accounts of the consul, to do anything more than revise the amount of collection and determine its arithmetical accuracy. (1879) 16 Op. Atty.-Gen. 268.

Discharge of master.—Under the Act of Feb. 28, 1803, sections 3 and 4, it was held that the master of the vessel is a "mariner," and was entitled, if a citizen of the United States, to three months' additional wages on being discharged in a foreign port, as in the case of a like discharge of any other seaman or mariner. *Arey's Case*, (1866) 11 Op. Atty.-Gen. 458.

Measure of damages for discharge.—If a

seaman is discharged without justifiable cause and without his own consent, the measure of damages is the full amount of wages till the return of the vessel and the expenses of his return. The intermediate earnings of the seaman may be deducted from the expenses of his return, but not from the wages due. *Hutchinson v. Coombs*, (1825) 1 Ware (U. S.) 58, 12 Fed. Cas. No. 6,955.

What constitutes a discharge.—The owners are bound by the acts of the master, and when the master had arrested and imprisoned the crew on a criminal charge, before the voyage was ended, and when one of the crew had been discharged on a hearing before the magistrate from the criminal complaint and the others had been committed to prison and were awaiting trial, and no orders of the master had been given that such prisoners should return to duty when discharged, this worked a discharge of the crew from the vessel and absolved the relationship of master and seaman. *Hill v. The Triumph*, (1841) 12 Fed. Cas. No. 6,500.

Abandonment of vessel.—If the seaman abandons the ship by consent of the master, such mutual agreement annuls the shipping contract between them, and the seaman cannot afterwards reclaim his place on board the ship. The master may be subject to penalties or the ship to a charge of extra wages by positive law, for abandoning or leaving a seaman in a foreign port, but this does not reinstate the shipping contract. *The Philadelphia*, (1845) Olc. Adm. 216, 19 Fed. Cas. No. 11,084.

Sec. 4581. [*Wages on discharge of seaman — collection — expenses of maintenance and return of sick seaman.*] If any consular officer, when discharging any seaman, shall neglect to require the payment of and collect the arrears of wages and extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States for the full amount thereof. The master shall provide any seaman so discharged with employment on a vessel agreed to by the seaman, or shall provide him with one month's extra wages, if it shall be shown to the satisfaction of the consul that such seaman was not discharged for neglect of duty, incompetency, or injury incurred on the vessel. If the seaman is discharged by voluntary consent before the consul, he shall be entitled to his wages up to the time of his discharge, but not for any further period. If the seaman is discharged on account of injury or illness, incapacitating him for service, the expenses of his maintenance and return to the United States shall be paid from the fund for the maintenance and transportation of destitute American seamen. [*R. S.*]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 16, 30 Stat. L. 759.

The section originally read as follows:

"SEC. 4581. If any consular officer, when discharging any seaman, shall neglect to require the payment of and collect the extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States for the full amount of their share of such wages, and to such seaman to the full amount of his share thereof; and if any seaman shall, after

his discharge, have incurred any expense for board or other necessities at the place of his discharge, before shipping again, such expense shall be paid out of the share of three months' wages to which he shall be entitled, which shall be retained for that purpose, and the balance only paid over to him." Act of Aug. 18, 1856, ch. 127, 11 Stat. L. 62.

It was amended by the Act of June 26, 1884, ch. 121, sec. 7, 23 Stat. L. 55, to read as follows:

"SEC. 4581. If any consular officer, when discharging any seaman, shall neglect to re-

quire the payment of and collect the arrears of wages and extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States to the full amount thereof. If any seaman, after his discharge, shall have incurred any expense for board or other necessities at the place of his discharge, before shipping again, or for transportation to the United States, such expense shall be paid out of the arrears of wages and extra wages received by the consular officer, which shall be retained for that purpose, and the balance only paid over to such seamen [sic]."

It was again amended by the Act of April 4, 1888, ch. 61, sec. 3, 25 Stat. L. 80, by striking out all after the words "to the full amount thereof," and inserting in lieu thereof as follows:

"If any seaman, after his discharge, shall have incurred any expense for board or other necessities, or for reasonable charges for medical care and nursing, at the place of his discharge, before shipping again, or for transportation to the United States, such expense shall be paid out of the arrears of wages and extra wages received by the consular officer, which shall be retained for that purpose, and the balance only paid over to such seaman; and if such arrears and extra wages are not sufficient to defray such expense, the deficiency shall be paid from the fund in the Treasury for the maintenance

and transportation of destitute American seamen."

It was again amended by the Act of Dec. 21, 1898, ch. 28, sec. 16, as above stated, to read as given in the text.

See note to R. S. sec. 4577, *supra*.

A disabled seaman, discharged in an American port at his own urgent solicitation, in order that he may be admitted to a United States marine hospital, cannot recover subsequent wages. *Raymond v. The Ella S. Thayer*, (1887) 40 Fed. Rep. 902.

Where a seaman shipped for a voyage is so severely chastised, with an improper weapon, because of his insolence, as to be necessarily left behind at a foreign port, he is entitled to his wages at the time of the vessel's arrival at the last port of delivery. *Brown v. The Brig Independence*, (1836) *Crabbe* (U. S.) 54, 4 Fed. Cas. No. 2,014.

Sick seaman not discharged. — A seaman, though sick, who is left by the master in a foreign port without his consent, and without being discharged, is entitled to his wages up to the end of the voyage, or until he can get back to his home port, though the consul collected from the master of the vessel wages actually due him and three months' extra wages. *Heynashon v. Merriman*, (1880) 1 Fed. Rep. 728.

"Other necessities," as used in amendment of 1884. See *The W. L. White*, (1885) 25 Fed. Rep. 505.

Sec. 4582. [*Extra wages upon discharge in case of sale — transportation to home port.*] Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding fifty dollars. [*R. S.*]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 17, 30 Stat. L. 759.

The section originally read as follows:

"SEC. 4582. Whenever a vessel belonging to a citizen of the United States is sold in a foreign country, and her company discharged, or when a seaman, a citizen of the United States, is, with his own consent, discharged in a foreign country, it shall be the duty of the master to produce to the consular officer, the certified list of his ship's company, and to pay such consul or officer, for every seaman so discharged, designated on such list as a citizen of the United States, three months' pay, over and above the wages

which may then be due to such seaman." Act of Feb. 28, 1803, ch. 9, 2 Stat. L. 203.

It was first amended by the Act of June 26, 1884, ch. 121, sec. 5, 23 Stat. L. 54, to read as follows:

"SEC. 4582. Whenever a vessel of the United States is sold in a foreign country, and her company discharged, it shall be the duty of the master to produce to the consular officer the certified list of his ship's company, and also the shipping articles, and to pay to said consular officer for every seaman so discharged one month's wages over and above the wages which may then be due to such seaman; but in case the master of the vessel so sold shall, with the assent of said

seaman, provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, then no payment of extra wages shall be required."

It was again amended by the Act of 1891, as above stated, to read as given in the text.

Sale because of wreck.—The earlier statute requiring three months' extra wages to be paid to the crew whenever the vessel was sold in a foreign country was held not to apply to sales rendered unavoidable by an imperious necessity for which the master or owner was not responsible. *Brown v. Chandler*, (1877) 4 Fed. Cas. No. 1,998; *The Wenonah*, (1875) 1 Hask. (U. S.) 606, 29 Fed. Cas. No. 17,412; *The Dawn*, (1841) 2 Ware (U. S.) 126, 7 Fed. Cas. No. 3,666; *The Dawn*, (1839) 1 Ware (U. S.) 499, 7 Fed. Cas. No. 3,665; *Henop v. Tucker*, 2 Paine, (U. S.) 151, 11 Fed. Cas. No. 6,368; *Gallagher v. Murray*, (1879) 10 Ben. (U. S.) 290, 9 Fed. Cas. No. 5,193; (1831) 2 Op. Atty.-Gen. 418; (1804) 1 Op. Atty.-Gen. 148. *Contra*, *Wells v. Meldrun*, (1832) Blatchf. & H. Adm. 342, 29 Fed. Cas. No. 17,402; *Pool v. Welsh*, (1830) Gilp. (U. S.) 193, 19 Fed. Cas. No. 11,269; *Hoffman v. Yarrington*, (1867) 1 Lowell (U. S.) 168, 12 Fed. Cas. No. 6,580. But where the vessel is sold in consequence of a disaster at sea, the owners will not be exempted from the payment of the extra wages if the vessel can be repaired at a reasonable expense and in a reasonable time, and the burden of proof to show that she could not be repaired is upon the owners. *The Dawn*, (1839) 1 Ware (U. S.) 499, 7 Fed. Cas. No. 3,665; *The Dawn*, (1841) 2 Ware (U. S.) 126, 7 Fed. Cas. No. 3,666; (1831) 2 Op. Atty.-Gen. 418; (1804) 1 Op. Atty.-Gen. 148. And so where the sale had been occasioned by the fault of the owner, as where the vessel was unseaworthy at the commencement of the voyage, the extra pay will be due. *Brown v. Chandler*, (1877) 4 Fed. Cas. No. 1,998; *Hoffman v. Yarrington*, (1867) 1 Lowell (U. S.) 168, 12 Fed. Cas. No. 6,580. So where the necessity for the sale

was occasioned by the natural decay and wear of the ship from natural causes, which existed at the inception of the voyage, and which were in no manner occasioned by any peril of the sea or disaster during the voyage, it was held to be within the provision of the Act, and the seamen were entitled to their extra wages. *The Wenonah*, (1875) 1 Hask. (U. S.) 606, 29 Fed. Cas. No. 17,412; *Wells v. Meldrun*, (1832) Blatchf. & H. Adm. 342, 29 Fed. Cas. No. 17,402.

The Act of 1803 was held equally applicable to the discharge of the men when such discharge took place in a foreign port, whether it was at the termination of their agreement or before such termination. *Dustin v. Murray*, (1871) 5 Ben. (U. S.) 10, 8 Fed. Cas. No. 4,201.

Discharge for want of funds.—Where seamen are discharged in a foreign port where there is no consul, the captain of the vessel stating that "there were no funds to pay with, and that she could sail no further," wages to the time of discharge being paid, they are entitled to extra wages under this section, as it read prior to the amendment. *Gove v. Judson*, (1864) 19 Fed. Rep. 523.

Effect of payment.—The payment to the consul of the amounts required by law, which the men failed to receive, or apply for, discharges the owners' liability therefor; but the master has no right to deduct from the amount due the men a charge for exchange. *Drew v. Pope*, (1871) 2 Sawy. (U. S.) 7, 7 Fed. Cas. No. 4,080.

Recovery.—The seamen have the right to maintain an action against the shipowner to recover as wages the amounts required to be paid by the master on a discharge in a foreign port. *Wells v. Meldrun*, (1832) Blatchf. & H. Adm. 342, 29 Fed. Cas. No. 17,402; *Emerson v. Howland*, (1816) 1 Mason (U. S.) 45, 8 Fed. Cas. No. 4,441; *Orne v. Townsend*, (1827) 4 Mason (U. S.) 541, 18 Fed. Cas. No. 10,583; *Dustin v. Murray*, (1871) 5 Ben. (U. S.) 10, 8 Fed. Cas. No. 4,201; *Woodworth v. Fennell*, 30 Fed. Cas. No. 18,015.

Sec. 4583. [*Discharge on complaint of seaman—extra wages and transportation.*] Whenever on the discharge of a seaman in a foreign country by a consular officer on his complaint that the voyage is continued contrary to agreement, or that the vessel is badly provisioned or unseaworthy, or against the officers for cruel treatment, it shall be the duty of the consul or consular agent to institute a proper inquiry into the matter, and, upon his being satisfied of the truth and justice of such complaint, he shall require the master to pay to such seaman one month's wages over and above the wages due at the time of discharge, and to provide him with adequate employment on board some other vessel, or provide him with a passage on board some other vessel bound to the port from which he was originally shipped, or to the most convenient port of entry in the United States, or to a port agreed to by the seaman. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 18, 30 Stat. L. 760.

The section originally read as follows:

"Sec. 4583. No payment of extra wages shall be required upon the discharge of any

seaman in cases where vessels are wrecked, or stranded, or condemned as unfit for service. If any consular officer, upon the complaint of any seaman that he has fulfilled his contract, or that the voyage is continued contrary to his agreement, is satisfied that

the contract has expired, or that the voyage has been protracted by circumstances beyond the control of the master, and without any design on his part to violate the articles of shipment, then he may, if he deems it just, discharge the mariner without exacting the three months' additional pay. No payment of such extra wages, or any part thereof, shall be remitted in any case, except as allowed in this section." Act of July 20, 1840, ch. 48, 5 Stat. L. 395; Act of Aug. 18, 1856, ch. 127, 11 Stat. L. 62.

It was first amended by the Act of June 26, 1884, ch. 121, sec. 3, 23 Stat. L. 54, to read as follows:

"SEC. 4583. Whenever on the discharge of a seaman in a foreign country, on his complaint that the voyage is continued contrary to agreement, the consular officer shall be satisfied that such voyage has been designedly and unnecessarily prolonged in violation of the articles of shipment, or whenever a seaman is discharged by a consular officer in consequence of any hurt or injury received in the service of the vessel, such consular officer shall require the payment by the master of one month's wages for such seaman over and above the wages due at the time of discharge."

It was again amended by the Act of 1896, as above stated, to read as given in the text.

Prior to the amendment it was held, under this section, that where an American vessel has been condemned in a foreign port as unfit for service and sold, and it appears that the master has acted in good faith and as a prudent owner would do if uninsured, and nothing more is shown excepting that the ship had met with some rough weather and some injuries from perils of the seas, the crew could not recover two months' extra wages, for they are within the proviso of section 26 of the Act of Aug. 18, 1856 (11 Stat. L. 62), denying extra wages when a ship is condemned as unfit for service. Nor in such a case can the crew recover the expense of their return to the United States. *Hoffman v. Yarrington*, (1867) 1 Lowell (U. S.) 168, 12 Fed. Cas. No. 6,580.

A literal strict construction of the exemption provided for by this section, before the amendment, was not the intention of Congress, but it was rather its purpose only to exonerate the master and owner from this liability when the enterprise is determined by a loss or condemnation of the vessel for which her owners are not directly responsible by their own neglect. *The Wenonah*, (1875) 1 Hask. (U. S.) 306, 29 Fed. Cas. No. 17,412.

Sec. 4584. [*Disposal of extra wages.*] [*Repealed.*]

This section was as follows:

"SEC. 4584. Whenever any consular officer upon the discharge of any seaman demands or receives extra three months' wages for such seaman, two-thirds thereof shall be paid by such officer to the seaman so discharged, upon his engagement on board of any vessel to return to the United States.

Unseaworthy vessel.—To bring a vessel within the exception of the section prior to amendment, as condemned as unfit for service, it is necessary that the vessel be condemned, the mere fact that the vessel was unseaworthy, and that the master had no funds to proceed farther, does not make an exception under this statute. *Gove v. Judson*, (1884) 19 Fed. Rep. 523.

Change of rule.—"The general maritime law, which in a case of semi-naufragium, or where the vessel was condemned and sold as too unseaworthy to be repaired, gave discharged seamen passage home and wages up to the time of reaching home, is unquestionably affected and modified by the statutes of the United States, which provide for all cases of discharge of seamen in foreign ports, and in case of destitute seamen their return home by the consular agents of the United States at the expense of a fund derived from the one-third of the three months' extra wages collected by the consul or agents from all American ships discharging seamen in foreign ports, except where ships are stranded or wrecked, or condemned as unfit for service." *Pardee, J., in Kelly v. Otis*, (1885) 23 Fed. Rep. 903.

Refusal to permit complaint.—The refusal of the master to permit a seaman to go on shore and lay his complaints of ill-treatment before the consul, and a well-grounded apprehension of continued ill-treatment, would justify the seaman in leaving the vessel and will entitle him to full wages to the end of his contract term. *Knowlton v. Boss*, (1848) 1 Sprague (U. S.) 163, 14 Fed. Cas. No. 7,901.

Recovery of extra wages.—Where an American seaman is discharged by the master in a foreign port, he may recover, in a libel for wages, the advance authorized if the same be not paid to the consul abroad to be distributed according to the Act. The *onus probandi* is on the master to show that the advance was paid. *Orne v. Townsend*, (1827) 4 Mason (U. S.) 541, 18 Fed. Cas. No. 10,583.

Damages for tort.—The extra month's wages allowed by this Act does not prevent the recovery for damages for the tort or for the expense of cure. *The W. L. White*, (1885) 25 Fed. Rep. 503.

Expenses of cure.—A discharge by the consul in a foreign port, while sick ashore as a result of an injury received in the service of the ship, will not affect the seaman's right to recover the expense of his cure. *The W. L. White*, (1885) 25 Fed. Rep. 503.

The remaining third shall be retained for the purpose of creating a fund for the payment of the passages of seamen, citizens of the United States, who may be desirous of returning to the United States, and for the maintenance of American seamen who may be destitute, and may be in such foreign port; and the several sums retained for such

fund shall be accounted for with the Treasury every six months by the persons receiving the same." Act of Feb. 28, 1803, ch. 9, 2 Stat. L. 203; Act of July 20, 1840, ch. 48, 5 Stat.

L. 395; Act of Aug. 18, 1856, ch. 127, 11 Stat. L. 62.

It was expressly repealed by the Act of June 26, 1884, ch. 121, sec. 8, 23 Stat. L. 55.

Secs. 4585-4587. [*Relate to assessments and collections for hospital fund.* See HOSPITALS AND ASYLUMS, vol. 3, p. 250, note.] [*Repealed.*]

Sec. 4588. [*Certificate of citizenship.*] The collector of every district shall keep a book or books, in which, at the request of any seaman, being a citizen of the United States of America, and producing proof of his citizenship, authenticated in the manner hereinafter directed, he shall enter the name of such seaman, and shall deliver to him a certificate, in the following form, that is to say: "I, A. B., collector of the district of D., do hereby certify, that E. F., an American seaman, aged _____ years, or thereabouts, of the height of _____ feet _____ inches, (describing the said seaman as particularly as may be,) has, this day, produced to me proof in the manner directed by law; and I do hereby certify that the said E. F. is a citizen of the United States of America. In witness whereof, I have hereunto set my hand and seal of office, this _____ day of _____." It shall be the duty of the collectors to file and preserve the proofs of citizenship so produced. For each certificate so delivered, the collectors shall be entitled to receive from the seaman applying for the same the sum of twenty-five cents. [*R. S.*]

Act of May 28, 1796, ch. 36, 1 Stat. L. 477.

Fees abolished.—See Act of June 19, 1886, ch. 421, sec. 1, under SHIPPING AND NAVIGATION.

Naturalization of seamen.—See NATURALIZATION, vol. 5, p. 210.

Absence of certificate.—It is no objection to the recovery of extra wages that the name

of the seaman is omitted as an American citizen in the list of the crew, certified from the collector's office, under the Act of 1796, ch. 36, sec. 4, 1 Stat. L. 477, if he is named as an American citizen on the master's list of the crew. *Orne v. Townsend*, (1827) 4 Mason (U. S.) 541, 18 Fed. Cas. No. 10,583.

Sec. 4589. [*Protest upon impressment.*] [*Repealed.*]

Sec. 4590. [*Penalty for neglect to make protest.*] [*Repealed.*]

These sections were as follows:

"SEC. 4589. The master of every vessel of the United States, any of the crew whereof shall have been impressed or detained by any foreign power, shall, at the first port at which such vessel arrives, if such impressment or detention happened on the high seas, or if the same happened within any foreign port, then in the port in which the same happened, immediately make a protest, stating the manner of such impressment or detention, by whom made, together with the name and place of residence of the person impressed or detained; distinguishing also whether he was an American citizen; and, if not, to what nation he belonged. Such master shall also transmit, by post or otherwise, every such protest made in a foreign country, to the nearest consul or agent, or to the minister of the United States resident in such country, if any such there be; preserving a duplicate of such protest, to be by him sent immediately after his arrival within the United States to the Secretary of State, together with information to whom the original protest was transmitted. In case such protest shall be made within the United States, or in any foreign country, in which no consul, agent, or minister of the United

States resides, the same shall, as soon thereafter as practicable, be transmitted by such master, by post or otherwise, to the Secretary of State." Act of May 28, 1796, ch. 36, 1 Stat. L. 477.

"SEC. 4590. The collectors of the districts of the United States shall, from time to time, make known the provisions of the two preceding sections to all masters of vessels of the United States entering or clearing at their several offices. The master of every such vessel shall, before he is admitted to an entry by any such collector, be required to declare on oath whether any of the crew of the vessel under his command have been impressed or detained, in the course of his voyage, and how far he has complied with the directions of the preceding section. Every master who willfully neglects or refuses to make the declarations herein required, or to perform the duties enjoined by the preceding section, shall be liable to a penalty of one hundred dollars. The collectors shall prosecute for any forfeiture that may be incurred under this section." Act of May 28, 1796, ch. 36, 1 Stat. L. 478.

They were expressly repealed by the Act of March 3, 1897, ch. 389, sec. 16, 29 Stat. L. 691.

Sec. 4591. [*List of certificates of citizenship.*] The collector of every port of entry in the United States shall send a list of the seamen to whom certificates of citizenship have been granted, once every three months, to the Secretary of State, together with an account of such impressments or detentions, as shall appear, by the protests of the masters, to have taken place. [R. S.]

Act of May 28, 1796, ch. 36, 1 Stat. L. 478.

[VI. FEES OF SHIPPING COMMISSIONERS.]

Sec. 4592. [*Fees of commissioner.*] Fees not exceeding the sums specified in the tables marked "C" and "D" in the schedule annexed to this Title, shall be payable upon all engagements and discharges and apprenticeships effected before any shipping-commissioner. Each shipping-commissioner shall cause a scale of the fees payable to be prepared, and to be conspicuously placed in the shipping-office, and may refuse to proceed with any engagement or discharge unless the fees payable thereon are first paid. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 263.
For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Fees abolished. — See Act of June 19, 1886, ch. 421, sec. 1, under SHIPPING AND NAVIGATION.

Sec. 4593. [*Payment of fees.*] [*Superseded.*]

This section was as follows:

"SEC. 4593. Every owner, consignee, agent, or master of a vessel engaging or discharging any seaman in a shipping-office, or before a shipping-commissioner, shall pay to the shipping-commissioner the whole of the fees hereby made payable in respect of such engagement or discharge; and may, for the purpose of in part re-imbursing himself, deduct, in respect to each such engagement or

discharge, from the wages of all persons except apprentices, so engaged or discharged, and retain, any sums not exceeding the sums specified in that behalf in the table marked 'E' in the schedule annexed to this Title." Act of June 7, 1872, ch. 322, 17 Stat. L. 263.

It was superseded by the abolishing of the collection of fees for shipping and discharging seamen by the Act of June 19, 1886, ch. 421, sec. 1. See SHIPPING AND NAVIGATION.

Sec. 4594. [*Limit of officer's compensation.*] In no case shall the salary, fees, and emoluments of any officer appointed under this Title be more than five thousand dollars per annum; and any additional fees shall be paid into the Treasury of the United States. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 277.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4595. [*Penalty for taking unlawful fees.*] Every shipping-commissioner, and every clerk or employé in any shipping-office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant-vessels, excepting the lawful fees payable under this Title, shall, for every such offense, be liable to a penalty of not more than two hundred dollars. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 263.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

[VII. OFFENSES AND PUNISHMENTS.]

Sec. 4596. [*Various offenses by seamen.—penalties.*] The words “domestic trade” in this section shall include trade between ports of the United States and trade between ports of the United States and the Dominion of Canada, Newfoundland, the West Indies, and Mexico. The words “foreign trade” shall include trade between ports of the United States and foreign ports, except as above specified, and trade between Atlantic and Pacific ports of the United States. Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses he shall be punishable as follows:

First. For desertion, if the offense occur at a port of the United States or a foreign port in the domestic trade, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned. If the offense occur at a foreign port in the foreign trade, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned; and also, at the discretion of the court, by imprisonment for not more than one month.

Second. For neglecting or refusing, without reasonable cause, to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his vessel or from his duty, not amounting to desertion or not treated as such by the master, if the offense occur at a port of the United States or a foreign port in the domestic trade, by a forfeiture from his wages of not more than two days' pay, or sufficient to defray any expenses which have been properly incurred in hiring a substitute; or if the offense occur at a foreign port, in the foreign trade, by a forfeiture from his wages of not more than two days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

Third. For quitting the vessel, in whatever trade engaged, at a foreign or domestic port, without leave after her arrival at her port of delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port, if of the United States, by forfeiture from his wages of not more than four days' pay, or upon arrival in a foreign port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea by being, at the option of the master, placed in irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port, if of the United States, by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of either a sum of not more than twelve days' pay or sufficient to defray any expenses which have been properly incurred in hiring a substitute, or upon arrival in a foreign port, in addition to the above penalty, by imprisonment for not more than three months, at the discretion of the court.

Sixth. For assaulting any master or mate, in whatever trade engaged, by imprisonment for not more than two years.

Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, in whatever trade engaged, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

Eighth. For any act of smuggling for which he is convicted, and whereby loss or damage is occasioned to the master or owner, in whatever trade engaged, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole or any part of his wages may be retained in satisfaction or on account of such liability; and he shall be liable to imprisonment for a period of not more than twelve months. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 19, 30 Stat. L. 760.

The section originally read as follows:

"SEC. 4596. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea-service, commits any of the following offenses, he shall be punishable as follows:

"First, For desertion, by imprisonment for not more than three months, and by forfeiture of all or any part of the clothes or effects he leaves on board, and of all or any part of the wages or emoluments which he has then earned.

"Second. For neglecting and refusing, without reasonable cause, to join his vessel, or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel sailing from any port, either at the commencement or during the progress of any voyage; or for absence at any time without leave, and without sufficient reason, from his vessel, or from his duty, not amounting to desertion, or not treated as such by the master; by imprisonment for not more than one month, and also, at the discretion of the court, by forfeiture of his wages, of not more than two days' pay, and, for every twenty-four hours of absence, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

"Third. For quitting the vessel without leave after her arrival at her port of delivery, and before she is placed in security, by forfeiture out of his wages of not more than one month's pay.

"Fourth. For willful disobedience to any lawful command, by imprisonment for not more than two months, and also, at the discretion of the court, by forfeiture out of his wages of not more than four days' pay.

"Fifth. For continued willful disobedience to lawful commands, or continued willful neglect of duty, by imprisonment for not more than six months, and also, at the discretion of the court, by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of either a sum not more than twelve days' pay, or sufficient to defray any expenses which have been properly incurred in hiring a substitute.

"Sixth. For assaulting any master or mate, by imprisonment for not more than two years.

"Seventh. For combining with any others of the crew to disobey lawful commands, or to neglect duty, or to impede navigation of the vessel, or the progress of the voyage, by imprisonment for not more than twelve months.

"Eighth. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages, of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

"Ninth. For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole or any part of his wages may be retained in satisfaction or on account of such liability; and he shall also be liable to imprisonment for a period of not more than twelve months." Act of June 7, 1872, ch. 322, 17 Stat. L. 273.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *infra*, p. 850.

Effect of other provisions. — The effect of the Act of June 9, 1874, ch. 260, was to sweep away all the penal provisions of the Act of June 7, 1872, ch. 322, as carried into the Revised Statutes, in so far as they applied to vessels in the coastwise trade, with the exceptions named in the repealing Act. U. S. v. Buckley, (1887) 31 Fed. Rep. 804; U. S. v. Bain, (1889) 40 Fed. Rep. 455; U. S. v. Mason, (1888) 34 Fed. Rep. 129; U. S. v. King, (1885) 23 Fed. Rep. 138; U. S. v. Bain, (1880) 5 Fed. Rep. 192; U. S. v. The Grace Lothrop, (1877) 95 U. S. 532.

But by the Act of Aug. 19, 1890, ch. 801 (*supra*, p. 851), the provisions of sections 4596 and 4597 are extended and made applicable to vessels in the coastwise trade and the trade between the United States and the Dominion of Canada or Newfoundland, or the West Indies, or Mexico, where the crews of such vessels have been shipped by a shipping commissioner as authorized by the Act of June 19, 1886, ch. 421, sec. 2 (*supra*, p. 850). The Victorian, (1898) 88 Fed. Rep. 797.

Foreign vessels. — This section applies to
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seamen engaged on foreign vessels while in American waters. *U. S. v. McArdle*, (1873) 2 Sawy. (U. S.) 367, 26 Fed. Cas. No. 15,653.

Commencement of service.—A seaman is a member of the crew from the time he signs the shipping articles and subject to all the penalties imposed on seamen by the maritime laws of the United States. *The Ida G. Farren*, (1904) 127 Fed. Rep. 766; *Tucker v. Alexandroff*, (1902) 183 U. S. 424. See also notes to R. S. secs. 4511, 4520, 4530, *supra*.

Desertion.—The Act of Congress of July 20, 1790 (1 Stat. L. 131), makes desertion carrying with it a forfeiture of wages a statutory offense and defines the evidence by which it is to be established. *The Martha*, (1830) 1 Blatchf. & H. Adm. 151, 16 Fed. Cas. No. 9,144.

Deviation.—Seamen are justified in leaving a vessel on the announcement made by the master that he intends to deviate from the voyage stipulated in the shipping articles. *The Laura Madsen*, (1897) 84 Fed. Rep. 362.

Persistent ill-treatment of seamen by the officers of the vessel justifies them in leaving the vessel, and if they do so they are not deserters. *Coffin v. Weld*, (1871) 2 Lowell (U. S.) 81, 5 Fed. Cas. No. 2,953.

Where the crew of a vessel had been wantonly treated with great harshness and severity, on a passage from Boston to a foreign port, and one of them after arriving at such port was, without cause, severely beaten by the mate, whereupon he appealed to the master, demanding to see the American consul, and refusing to serve longer under the mate, it was held that the seaman had the right to lay his complaint before the consul, and that the master had no right to require him to return immediately and unconditionally to duty under the mate. *Knowlton v. Boss*, (1848) 1 Sprague (U. S.) 163, 14 Fed. Cas. No. 7,901.

The master having punished the seaman for refusing so to return, and having given no assurance that the mate would be discharged, it was held that the seaman had a right to leave the service of the ship and to recover his wages up to the time of his reaching Boston by another vessel; and also damages for the punishment and for refusal of permission to see the consul. *Knowlton v. Boss*, (1848) 1 Sprague (U. S.) 163, 14 Fed. Cas. No. 7,901.

Forcible return.—If a seaman who absents himself from his vessel is afterwards forcibly brought back, and returns to his duty, that is a condonation of his offense and a remission of the forfeiture of his wages; and a stipulation in the shipping articles that it shall not have such effect will be held to be void. *Freeman v. Baker*, (1833) Blatchf. & H. Adm. 372, 9 Fed. Cas. No. 5,084.

Discharge.—On a controversy between the seamen and master over claims for wages, the seamen were told to go to work or go ashore, and they agreed to the latter if they were paid off in full to date, and orders were given them for their wages. It was held that the seamen were discharged and were

not deserters. *The Frank C. Barker*, (1884) 19 Fed. Rep. 332.

Termination of contract.—There can be no desertion after the voyage is ended. The voyage is ended when the vessel is safely moored at her last port of discharge. *The Martha*, (1830) 1 Blatchf. & H. Adm. 151, 16 Fed. Cas. No. 9,144.

The failure of the captain to punish a seaman for his neglect of duty and for leaving the vessel from time to time for the purpose of dissipation does not give rise to an implication of consent on the part of the master to the termination of the contract. *The Occidental*, (1898) 87 Fed. Rep. 485.

Intent.—Where a seaman went ashore without intention to desert, and while in a saloon on shore was taken in custody by the police as a witness against the saloonkeeper, and imprisoned in a house of detention, if the vessel meanwhile leaves the port, these facts do not make out a desertion. *The Lizzie M. Dun*, (1887) 30 Fed. Rep. 927.

A seaman's leaving the vessel without permission is not necessarily desertion. In order to constitute desertion in the sense of the law, he must quit the ship and her service, not only without leave but without justifiable cause, and with intent not again to return to the ship's duty. *The Mary C. Conery*, (1881) 9 Fed. Rep. 222.

A seaman who goes ashore without the intention of deserting, to apply to an American consul for redress for alleged cruel treatment on board, leaves the vessel for reasonable cause, and does not incur a forfeiture of wages. *Freeman v. Baker*, (1833) Blatchf. & H. Adm. 372, 9 Fed. Cas. No. 5,084.

Drunkness is no excuse for desertion. *The Mermaid*, (C. C. A. 1902) 115 Fed. Rep. 13, (1900) 104 Fed. Rep. 301.

Where a seaman has gone ashore by permission and without knowing that the ship was about to sail, and his failure to rejoin her is caused by drunkenness, but without any intention on his part to desert, only a qualified forfeiture will in such case be imposed. *The Ship Ericson*, (1876) 3 Sawy. (U. S.) 559, 8 Fed. Cas. No. 4,510.

Absence without leave.—Where a seaman is sent ashore on an errand and stays beyond all reasonable limit warranted by the errand on which he has been sent, and the master makes all reasonable efforts to find him, the master need not wait for him longer, but may leave him, and where there is no intention on the part of the seaman to desert, this will not be considered desertion, but will be absence from duty without leave and without sufficient excuse, for which the court may inflict punishment in its discretion, and the master will not be liable for the board or expenses of return incurred by the seaman. *Brink v. Lyons*, (1883) 18 Fed. Rep. 605.

Failure to join vessel.—A seaman is guilty of desertion and forfeits his wages where, when he leaves the ship by permission, he does not return in time to sail with her, knowing the time when she is to leave port, and when thereafter he does not attempt to join her at a port where he knows

she will be, but goes to a port where he knows she will not be, until the season is over. *The Ida G. Farren*, (1904) 127 Fed. Rep. 766.

A seaman leaving a ship at a foreign port, during her voyage, with or without leave, and not returning within a reasonable time, before another man is hired in his place, forfeits the wages then due him. *The Philadelphia*, (1845) Olc. Adm. 216, 19 Fed. Cas. No. 11,084.

If a seaman sent on shore in the employment of the ship neglects to return to his duty, the ship continuing at the port a sufficient time to give him opportunity to do so, the master in the meantime making inquiry for him, such voluntary absence will be a desertion and work a forfeiture of his wages. *Piehl v. Balchen*, (1844) Olc. Adm. 24, 19 Fed. Cas. No. 11,137.

Refusal to join vessel.—When a seaman, against the orders of the master and knowing that the ship was about to sail, went ashore and failed to return to the ship, and subsequently, when apprehended by the master, broke away from his custody, and it appeared that further delay would have imperiled the ship, this conduct amounted to a desertion, and the wages due the seaman were forfeited. *The Ship Ericson*, (1876) 3 Sawy. (U. S.) 559, 8 Fed. Cas. No. 4,510.

Absence without leave.—The forfeiture of wages for absence without leave is left largely to the discretion of the court; and where such absence was not fully justified, but had caused no pecuniary loss to the master, a small deduction from the wages should be made. *Scott v. Rose*, (1874) 2 Lowell (U. S.) 381, 21 Fed. Cas. No. 12,545.

Whether these provisions of law are now applicable to coastwise voyages or not, the principles involved in them should govern the courts in dealing with seamen. They but reflect the spirit of the maritime law. Following the general rule of the maritime law which abhors the entire forfeitures that would often leave seamen helpless and dependent, and which refuses to enforce such forfeitures except for gross misconduct, a forfeiture of the entire wages should be limited to cases of that character. In a case not amounting to desertion, and not of any aggravated misconduct, the forfeiture upon the analogy of the statute should not exceed more than two days' pay, etc., and the "expense of hiring a substitute." *The San Marcos*, (1886) 27 Fed. Rep. 567.

Clandestine return.—After a mariner has voluntarily left the vessel in a foreign port without leave of the officer in command, and his place has been supplied by another, he cannot acquire a right to be reinstated, and to wages, by coming clandestinely on board and remaining concealed from her officers until she is out at sea. *The Philadelphia*, (1845) Olc. Adm. 216, 19 Fed. Cas. No. 11,084.

The master under such circumstances is authorized to compel him to work his passage while he continues with the ship, and no engagement to pay him wages can be

implied therefrom. *The Philadelphia*, (1845) Olc. Adm. 216, 19 Fed. Cas. No. 11,084.

Punishment for desertion.—Where seamen deserted and were detained in the prison of the port in consequence of their refusal to return to duty on board the ship, the proper charges for their arrest and detention, the wages of their substitutes, and the amounts paid by the ship for injury to property by them while in custody on their way to the ship, should be deducted from their wages. *The W. F. Babcock*, (C. C. A. 1898) 85 Fed. Rep. 978.

A stipulation in writing for a series of voyages may be terminated or varied by mutual consent of the master and crew and a new voyage be substituted by parol agreement. But the desertion of the seamen during the second voyage cannot be made to inure to the master as a forfeiture of wages earned and due under the first one. *Piehl v. Balchen*, (1844) Olc. Adm. 24, 19 Fed. Cas. No. 11,137.

Disobedience of orders.—A seaman must obey orders or suffer the penalty under the statute; therefore he does not assume the risk of operating the winch, known to be dangerous, when ordered so to do by his superior officer, and if he exercises reasonable care to avoid injury he may recover damages for injuries received in obeying such orders. *Eldridge v. Atlas Steamship Co.*, (1892) 134 N. Y. 187.

Quarrelsomeness, etc.—No forfeiture of wages is incurred by quarrelsomeness or the use of foul language. The general maritime law empowers the master, by means of other punishments, to enforce proper discipline in these respects. *The Alps*, (1883) 19 Fed. Rep. 139.

Insubordination on the part of a steward, an educated man, is a greater offense than on that of an ordinary mariner. *Peters v. Martens*, (1875) 2 W. N. C. (Pa.) 603, 19 Fed. Cas. No. 11,031.

A refusal to do duty at a moment of high excitement from punishment inflicted on the party, if not followed by obstinate perseverance, does not cause a forfeiture of wages. *Orne v. Townsend*, (1827) 4 Mason (U. S.) 541, 18 Fed. Cas. No. 10,583.

Embezzlement.—Where one of the libellants had been guilty of embezzling the cargo and had abandoned the vessel without leave, before the final relinquishment by the master of prosecuting the voyage according to the original contract, such libellant should not recover wages, although criminally punished for the offense of mutinous and disorderly conduct on shipboard. *Hill v. The Triumph*, (1841) 12 Fed. Cas. No. 6,500.

Punishment.—Where the libellants were guilty of insubordinate and mutinous conduct on board of the vessel on the voyage, and the master had arrested and imprisoned them on a criminal prosecution for the offense, they should not, in addition to the punishment for the criminal offense charged against them, absolutely forfeit their wages for the voyage. *Hill v. The Triumph*, (1841) 12 Fed. Cas. No. 6,500.

On a libel being filed in admiralty on the

civil side of the court to recover seamen's wages, it appearing that the libelants had been guilty of insubordinate and mutinous conduct on the voyage, yet that they had subsequently performed duty on board and aided in bringing the vessel safely into port, it was held that their wages should not be totally forfeited. *Hill v. The Triumph*, (1841) 12 Fed. Cas. No. 6,500.

Imprisonment on shore.—"All laws sanctioning and regulating imprisonment and the use of force to compel involuntary servitude on the part of seamen in the merchant vessels of this country were repealed and abrogated by the Act of Dec. 21, 1898, except that disobedience at sea may be punished by confinement in irons with a bread and water diet. In this statute the legislative intent to extend to sailors the benefit of the Thirteenth Amendment to the Constitution of the United States is plainly indicated, and at the present time it is just as unlawful to imprison a sailor, who at any port refuses to perform a contract which he has entered into for service on a ship, as to imprison a journeyman mechanic or farm laborer for a similar refusal. No matter how much inconvenience and loss shipowners and mer-

chants and travelers may suffer by detention of an American ship, caused by refusal of the crew when the ship is in port to proceed on a voyage, it is unlawful to use judicial process or force to coerce the crew." *Per Hanford, D. J., The South Portland*, (1901) 111 Fed. Rep. 767.

Liability of vessel.—Imprisonment at the instance of the master, whether through judicial process or otherwise, is a violation of personal rights which renders the vessel liable for damages. *The South Portland*, (1901) 111 Fed. Rep. 767; *Johnston v. Mowatt*, (1902) 115 Fed. Rep. 844.

Where seamen refuse to work while in a port and before the termination of the voyage, and where the master notifies the authorities of that fact and asks that he may discharge such seamen, but the authorities refuse permission, but take charge of the matter and confine the seamen in prison, returning them thereafter to the ship, upon which they finish the voyage, doing their work as seamen, the master of the vessel cannot be held liable for such imprisonment, it not being at his instance and he having no control over it. *Johnson v. Mowatt*, (1902) 115 Fed. Rep. 844.

Sec. 4597. [Entry of offense in log book.] Upon the commission of any of the offenses enumerated in the preceding section an entry thereof shall be made in the official log book on the day on which the offense was committed, and shall be signed by the master and by the mate or one of the crew; and the offender, if still in the vessel, shall, before her next arrival at any port, or, if she is at the time in port, before her departure therefrom, be furnished with a copy of such entry, and have the same read over distinctly and audibly to him, and may thereupon make such a reply thereto as he thinks fit; and a statement that a copy of the entry has been so furnished, or the same has been so read over, together with his reply, if any, made by the offender, shall likewise be entered and signed in the same manner. In any subsequent legal proceedings the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof the court hearing the case may, at its discretion, refuse to receive evidence of the offense. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 274.

This section was amended to read as above by the Act of Dec. 21, 1898, ch. 28, sec. 20, 30 Stat. L. 761. The amendment consists in the addition in the first clause of the words "on the day on which the offense was committed"; the omission of the word "either" before the words "be furnished with a copy," and the insertion of the word "and" in place of the word "or" before the words "have the same read."

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following. *supra*, p. 850.

The evident purpose of the statute is to prevent prosecutions for breaches of discipline on shipboard, except in those cases where the master shall deem the matter of sufficient importance, while the circumstances are all fresh in his memory and before there is any temptation to make use of it as a means to some other end, to enter a charge against

the offender, together with his reply, in the official log book. If any difficulty arises between the crew and the master, a previous offense or dereliction, of which no entry was made, cannot be invoked or trumped up, as a makeweight in this subsequent controversy. *U. S. v. Brown*, (1876) 3 Sawy. (U. S.) 602, 24 Fed. Cas. No. 14,672.

The general purpose of these provisions of law is to prevent the oppression of seamen by trumping up unfounded claims of misconduct; and ordinarily, and if the facts are left in doubt, the failure to enter the facts in the log should defeat the attempted defense. *The Bark T. F. Whiton*, (1879) 10 Ben. (U. S.) 369, 23 Fed. Cas. No. 13,849.

Prior to the amendments of this and the preceding section by the Act of 1898, it was held that under the Act of Aug. 19, 1890, ch. 801, as amended by the Act of Feb. 18, 1895, vessels engaged in coastwise trade (except between the ports on the Atlantic and ports on the Pacific coast) and vessels engaged

in trade in the ports of the United States and the Dominion of Canada are exempt from the requirements of the Act as to keeping official log books. Therefore the production of an official log book containing evidence of the desertion of any of the crew of such vessels is not necessary for the forfeiture of a deserter's wages. *The Victorian*, 80 Fed. Rep. 797.

Time of entry in log.—To make the log of any value as evidence the entries should be made at the time of the transactions referred to. *The Mary C. Conery*, (1881) 9 Fed. Rep. 222.

The captain's entries in his memorandum book, a month afterwards, from previous pencil memoranda, are not entitled to the weight of evidence of a log book with proper contemporaneous entries. *Brink v. Lyons*, (1883) 18 Fed. Rep. 605.

Refusal to hear read.—The command that a seaman attend to hear the entry in the log read is a lawful command, and a wilful disobedience of it will subject the seaman to the penalty provided by statute. *The Alps*, (1883) 19 Fed. Rep. 139.

The failure to enter facts in the log on which deduction of wages is claimed does not absolutely prevent proof of those facts, but gives the court a discretion to reject the

evidence. *The Bark T. F. Whiton*, (1879) 10 Ben. (U. S.) 369, 23 Fed. Cas. No. 13,849.

A prosecution cannot be maintained against a seaman for any of the offenses defined in R. S. sec. 4596, unless an entry of the circumstances is made by the master in the official log book of the vessel as soon as possible after the occurrence, and read over to the seaman, or a copy furnished him and his reply thereto entered in the same manner. *U. S. v. Brown*, (1876) 3 Sawy. (U. S.) 602, 24 Fed. Cas. No. 14,672.

Contradicting log.—If the log book states a desertion, it may be repelled by proof of the falsity of the entry, or its being made by mistake. *Orne v. Townsend*, (1827) 4 Mason (U. S.) 541, 18 Fed. Cas. No. 10,583.

Failure to produce log.—As the log book was not produced the presumption was that the entry was not made in the log. *The Bark T. F. Whiton*, (1879) 10 Ben. (U. S.) 369, 23 Fed. Cas. No. 13,849.

Desertion may be proved either under the maritime law, including proof of intent not to return or absence without leave, or under section 4596 without reference to that intent, and where proved under the maritime law an entry in the ship's log at the time need not be shown. *Welcome v. The Yosemite*, (1883) 18 Fed. Rep. 383.

Sec. 4598. [*Deserters may be apprehended on justice's warrant.*] [*Repealed.*]

Sec. 4599. [*Arrest of seamen without warrant, when allowable.*] [*Repealed.*]

These sections were as follows:

"SEC. 4598. If any seaman who shall have signed a contract to perform a voyage shall, at any port or place, desert, or shall absent himself from such vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the United States, upon the complaint of the master, to issue his warrant to apprehend such deserter, and bring him before such justice; and if it then appears that he has signed a contract within the intent and meaning of this Title, and that the voyage agreed for is not finished, or altered, or the contract otherwise dissolved, and that such seaman has deserted the vessel, or absented himself without leave, the justice shall commit him to the house of correction or common jail of the city, town, or place, to remain there until the vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seaman." Act of July 20, 1790, ch. 29, 1 Stat. L. 134.

"SEC. 4599. Whenever, either at the commencement of or during any voyage, any seaman or apprentice neglects or refuses to join, or deserts from or refuses to proceed to sea in, any vessel in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the

master, or any mate, or the owner, or consignee, or shipping-commissioner, may, in any place in the United States, with or without the assistance of the local public officers or constables, who are hereby directed to give their assistance if required, and also at any place out of the United States, if and so far as the laws in force at such place will permit, apprehend him without first procuring a warrant; and may thereupon, in any case, and shall in case he so requires and it is practicable, convey him before any court of justice or magistrate of any State, city, town, or county, within the United States, authorized to take cognizance of offenses of like degree and kind, to be dealt with according to the provisions of law governing such cases; and may, for the purpose of conveying him before such court or magistrate, detain him in custody for a period not exceeding twenty-four hours, or may, if he does not so require, or if there is no such court at or near the place, at once convey him on board. If such apprehension appears to the court or magistrate before whom the case is brought to have been made on improper or on insufficient grounds, the master, mate, consignee, or shipping-commissioner who makes the same, or causes the same to be made, shall be liable to a penalty of not more than one hundred dollars; but such penalty, if inflicted, shall be a bar to any action for false imprisonment." Act of June 7, 1872, ch. 322, 17 Stat. L. 274.

They were expressly repealed by the Act of Dec. 21, 1898, ch. 28, sec. 25, *supra*, p. 870.

For cases construing these sections and the Act from which they were taken, see *Patterson v. Bark Eudora*, (1903) 190 U. S. 174; *Tucker v. Alexandroff*, (1902) 183 U. S. 444, 465; *Robertson v. Baldwin*, (1897) 165 U. S. 276; *The W. F. Babcock*, (1897) 79 Fed. Rep. 94; *U. S. r. Hom Hing*, (1892) 48 Fed. Rep. 639; *The San Marcos*, (1886) 27 Fed. Rep. 568; *Turner's Case*, (1825) 1 Ware (U. S.) 77, 24 Fed. Cas. No. 14,248; *Ex p. Sprout*, (1807) 1 Cranch (C. C.) 424, 22 Fed. Cas. No. 13,267; *Pierce v. Paton*, (1833) Gilp. (U. S.) 435, 19 Fed. Cas. No. 11,145;

The Martha, (1830) Blatchf. & H. Adm. 151, 16 Fed. Cas. No. 9,144; *Magee v. The Ship Moss*, (1831) Gilp. (U. S.) 219, 16 Fed. Cas. No. 8,944; *Harrison's Case*, (1804) 1 Cranch (C. C.) 159, 11 Fed. Cas. No. 6,131; *Ex p. D'Oliviera*, (1813) 1 Gall. (U. S.) 474, 7 Fed. Cas. No. 3,967; *Bray v. Ship Atalanta*, (1794) Bee Adm. 48, 4 Fed. Cas. No. 1,819; *Brower v. The Schooner Maiden*, (1832) Gilp. (U. S.) 294, 4 Fed. Cas. No. 1,970; *In re Bryant*, (1865) Deady (U. S.) 118, 4 Fed. Cas. No. 2,067; (1897) 21 Op. Atty-Gen. 483-486; (1875) 14 Op. Atty-Gen. 521.

Sec. 5280. [*Arrest of deserting seamen from foreign vessels.*] On application of a consul or vice-consul of any foreign government having a treaty with the United States stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government, while in any port of the United States, and on proof by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged, at the time of desertion, to the crew of such vessel, it shall be the duty of any court, judge, commissioner of any circuit court, justice, or other magistrate, having competent power, to issue warrants to cause such person to be arrested for examination. If, on examination, the facts stated are found to be true, the person arrested not being a citizen of the United States, shall be delivered up to the consul or vice-consul, to be sent back to the dominions of any such government, or, on the request and at the expense of the consul or vice-consul, shall be detained until the consul or vice-consul finds an opportunity to send him back to the dominions of any such government. No person so arrested shall be detained more than two months after his arrest; but at the end of that time, shall be set at liberty, and shall not be again molested for the same cause. If any such deserter shall be found to have committed any crime or offense, his surrender may be delayed until the tribunal before which the case shall be depending, or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect. [R. S.]

Act of March 2, 1829, ch. 41, 4 Stat. L. 359; Act of Feb. 24, 1855, ch. 123, 10 Stat. L. 614 See annotations under EXTRADITION, vol. 3, p. 89.

Sec. 4600. [*Reclamation and discharge of deserters by consular officers.*] It shall be the duty of all consular officers to reclaim deserters, discountenance insubordination by every means in their power, and, where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner. In all cases where seamen or officers are accused the consular officer shall inquire into the facts and proceed as provided in section forty-five hundred and eighty-three of the Revised Statutes; and the officer discharging such seamen shall enter upon the crew list and shipping articles and official log the cause of discharge and the particulars in which the cruel or unusual treatment consisted, and subscribe his name thereto officially. He shall read the entry made in the official log to the master, and his reply thereto, if any, shall likewise be entered and subscribed in the same manner. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 21, 30 Stat. L. 761.

The section originally read as follows:

"SEC. 4600. It shall be the duty of con-

sular officers to reclaim deserters and discountenance insubordination by every means within their power; and where the local authorities can be usefully employed for that purpose, to lend their aid and use their ex-

ertions to that end, in the most effectual manner. In all cases where deserters are apprehended, the consular officer shall inquire into the facts; and if he is satisfied that the desertion was caused by unusual or cruel treatment, the seaman shall be discharged, and receive, in addition to his wages to the time of the discharge, three months' pay; and the officer discharging him shall enter upon the crew-list and shipping-articles the cause of discharge, and the particulars in which the cruelty or unusual treatment consisted, and subscribe his name thereto, officially." Act of June 7, 1872, ch. 322, 17 Stat. L. 275.

It was first amended by the Act of June 26, 1884, ch. 121, sec. 6, 23 Stat. L. 55, to read as follows:

"SEC. 4600. It shall be the duty of consular officers to reclaim deserters and discountenance insubordination by every means within their power, and where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner. In all cases where deserters are apprehended the consular officer shall inquire into the facts; and if he is satisfied that the desertion was caused by unusual or cruel treatment, he shall discharge the seaman, and require the master of the vessel from which such seaman is discharged to pay one month's wages over and above the wages then due; and the officer discharging such seaman shall enter upon the crew-list and shipping articles the cause of discharge, and the particulars in which the cruelty or unusual treatment consisted, and the facts as to his discharge or re-engagement, as the case may be, and subscribe his name thereto officially." It was again amended by the Act of 1898 as above stated to read as given in the text.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Duty of consul.—The statute does not in terms authorize consuls to seek the use of the prisons of a foreign nation. It makes it their duty to obtain the return and restoration of deserters, to get them back to the ship, and to obtain the assistance of local officers for that purpose, and when the deserters have been apprehended, to inquire into the facts, ascertain the cause of the desertion, and if the cause was the cruelty of the officers, to discharge the seamen; but if the desertion was without cause, and the seamen refuse to return to the ship, and assert a determination to desert, then it is still the duty of the consuls to reclaim the deserters and discountenance insubordination, and to that end the seamen will be left in the custody of the local authorities, or will be committed to their custody so that they may be treated in accordance with the local statutes or regulations upon the subject of the detention of seamen who are at large in the port. Their actual imprisonment, in the absence of local statutes giving foreign consuls such a special power, is by the act of the local magistrates or officers. The W. F.

Babcock, (C. C. A. 1898) 85 Fed. Rep. 978. See also *Jordan v. Williams*, (1851) 1 Curt. (U. S.) 69, 13 Fed. Cas. No. 7,528.

Hearing and proceedings.—Whether the men are deserters or not, they cannot lawfully be thrown into prison without such an inquiry and opportunity to be heard as the statutes provide. And when such measures are taken by the master with a view of confiscating the wages of seamen for several months succeeding, he must take good care to collect and preserve for his defense and for the defense of the ship sufficient legal evidence to show both the necessity for such proceedings and a substantial compliance with all the statutory requirements to justify it. The W. F. Babcock, (1897) 79 Fed. Rep. 92.

Proceedings to be certified.—It cannot be inferred because a sailor was arrested for desertion in a foreign port, and afterwards went to jail, that the consul inquired into the facts of the desertion and contumacy, because his detention in jail is by virtue of local laws and does not depend upon the action of foreign consuls. Neither do the naked facts of an appearance before the consul and a subsequent detention by police officers raise a presumption of a judicial investigation and a finding of facts by a consul. They simply show that the police kept the sailors in detention. The finding and the action of the consul must be shown by affirmative testimony. When he acts as a magistrate with power to discharge the seaman, or to cause or obtain his imprisonment, his acts and his conclusions should be certified, as in the case of other officers of the same character, by written records, and intendments will not supply the entire absence of proof from the consul's office. The W. F. Babcock, (C. C. A. 1898) 85 Fed. Rep. 978.

Proceedings as evidence.—To make proceedings before the consul evidence, there must be either a duly proved copy of his record, or else his deposition, as in the case of other witnesses. The W. F. Babcock, (1897) 79 Fed. Rep. 92.

Effect of record and certificate.—The consular agent is intrusted with large powers in regard to the question of desertion, and the presumption of regularity and validity attaches to the contemporaneous record of his official proceedings as an examining magistrate, and his records will have credence and receive every reasonable intendment in their favor, when they show that he had jurisdiction, and that the parties were present and were heard. The W. F. Babcock, (C. C. A. 1898) 85 Fed. Rep. 978.

Discharge for cruel treatment.—The provisions requiring consuls, when deserters are apprehended and brought before them, to inquire into the facts, and if satisfied that the desertion was caused by unusual or cruel treatment, to discharge the deserter, who shall have three months' extra pay, is applicable to cases of seamen who have not deserted. *Coffin v. Weld*, (1871) 2 Lowell (U. S.) 81, 5 Fed. Cas. No. 2,953.

Duty of consul.—Where a crew having

complained to the consul of cruel conduct on the part of the mate, a compromise was effected by him by which the mate was discharged and the crew went to work, after which they refused duty upon an unfounded suspicion that the mate had not been discharged, and they were then regularly discharged for disobedience, it was held that they were entitled to extra wages, as they had a right to a discharge on the ground of cruelty. *Coffin v. Weld*, (1871) 2 Lowell (U. S.) 81, 5 Fed. Cas. No. 2,953.

Extra pay.—If the seaman was discharged because of unusual or cruel treatment he is entitled to one month's extra wages allowed by statute, and in such cases the consul-general is authorized to exercise some reasonable discretion in determining this extra allowance in reference to actual or anticipated ill-treatment. (1898) 22 Op. Atty-Gen. 212.

Damages.—The payment of one month's extra wages on a discharge for cruel treatment does not bar a claim for damages for injuries inflicted by such cruelty. *The W. L. White*, (1885) 25 Fed. Rep. 504.

Excessive punishment of a seaman by a master is not excused because erroneously authorized by a consul. *Peters v. Martens*, (1875) 2 W. N. C. (Pa.) 603, 19 Fed. Cas. No. 11,031.

Expenses.—"This statute has been construed in the Circuit Court to give consuls jurisdiction over the imprisonment of our seamen in foreign jails, and in such case to relieve the master from responsibility in the matter if he has acted in good faith. *Jordan v. Williams*, (1851) 1 Curt. (U. S.) 69, 13 Fed. Case. No. 7,528. * * * In suits between the crew and the master or owners such an imprisonment by order of a consul must be presumed to have been necessary; and it seems to follow and is intimated by

the court that the necessary charges resulting from that course must fall upon the seamen, as between them and the owners, though they have a right of redress against the consul." *Chester v. Benner*, (1871) 2 Lowell (U. S.) 76, 5 Fed. Cas. No. 2,660.

Liability of vessel.—Since the passage of the Act of July 20, 1840, when a master of a vessel in a foreign port lays a complaint against any of his crew fully and fairly before the consul, and the complaint is such that a competent master may fairly believe it to be within the consul's jurisdiction, and the consul upon examination finds it expedient or necessary to make use of the local authorities to keep the men safely, the master is not responsible for their imprisonment as for a tort, the consul being answerable to the injured party for any malversation or abuse of power. *Jordan v. Williams*, (1851) 1 Curt. (U. S.) 69, 13 Fed. Cas. No. 7,528.

The liberty given to the crew by said Act to lay their complaints before the consul is to be exercised under the fair and reasonable discretion of the master of the vessel as to the time and mode of landing; and a refusal of duty on the part of the crew, because such permission is not given, would be justifiable only when such refusal is necessary to prevent the loss of the right. *Jordan v. Williams*, (1851) 1 Curt. (U. S.) 69, 13 Fed. Cas. No. 7,528.

Under the Act of Congress of July 20, 1840, sec. 16, 5 Stat. L. 396, the phrase, "to lay their complaints before the consul," applies only to such causes of complaint as are specified in the Act, viz., that the mariner is detained contrary to his agreement, or that the vessel is unseaworthy, etc., and not to affrays or quarrels between the officers and crew. *Jordan v. Williams*, (1851) 1 Curt. (U. S.) 69, 13 Fed. Cas. No. 7,528.

Sec. 4601. [Penalty for secreting seamen.] [Repealed.]

This section was as follows:

"Sec. 4601. Whenever any person harbors or secretes any seaman belonging to any vessel, knowing him to belong thereto, he shall be liable to pay ten dollars for every day during which he continues so to harbor or secrete such seaman, recoverable one-half to the use of the person prosecuting for the same, the other half to the use of the United States." Act of July 20, 1790, ch. 29, 1 Stat. L. 133.

It was amended by the Act of Feb. 18,

1875, ch. 80, 18 Stat. L. 320, to correct a misspelled word.

It was expressly repealed by the Act of Dec. 21, 1898, ch. 28, sec. 25, set out *supra*, p. 870.

The following cases construed the provisions of the above section: *Grant v. U. S.* (C. C. A. 1893) 58 Fed. Rep. No. 694-696; *U. S. v. Grant*, (1893) 55 Fed. Rep. 414-416; *U. S. v. Sullivan*, (1890) 43 Fed. Rep. 603; *U. S. v. Minges*, (1883) 16 Fed. Rep. 657; *Ex p. Young* (1900) 36 Oregon 249.

Sec. 4602. [Penalty for drunkenness or neglect of duty.] Any master of, or any seaman or apprentice belonging to, any merchant-vessel, who, by willful breach of duty, or by reason of drunkenness, does any act tending to the immediate loss or destruction of, or serious damage to such vessel, or tending immediately to endanger the life or limb of any person belonging to or on board of such vessel; or who, by willful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such vessel from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on

board of such ship from immediate danger to life or limb, shall, for every such offense, be deemed guilty of a misdemeanor, punishable by imprisonment for not more than twelve months. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 274.

This section is made applicable to seamen "shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and the Dominion of Canada, or New Foundland, or

the West Indies, or Mexico," by the Act of Aug. 19, 1890, ch. 801, as amended by Acts of Feb. 18, 1895, ch. 97, and March 3, 1897, ch. 389, *sec. 8, supra*, p. 851.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4603. [*Enforcement of forfeitures.*] Any question concerning the forfeiture of, or deductions from, the wages of any seaman or apprentice, may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding the offense in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 275.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4604. [*Disposal of forfeitures.*] All clothes, effects, and wages which, under the provisions of this Title, are forfeited for desertion, shall be applied, in the first instance, in payment of the expenses occasioned by such desertion, to the master or owner of the vessel from which the desertion has taken place, and the balance, if any, shall be paid by the master or owner to any shipping-commissioner resident at the port at which the voyage of such vessel terminates; and the shipping-commissioner shall account for and pay over such balance to the judge of the circuit court within one month after the commissioner receives the same, to be disposed of by him in the same manner as is prescribed for the disposal of the money, effects, and wages of deceased seamen. Whenever any master or owner neglects or refuses to pay over to the shipping-commissioner such balance, he shall be liable to a penalty of double the amount thereof, recoverable by the commissioner in the same manner that seamen's wages are recovered. In all other cases of forfeiture of wages, the forfeiture shall be for the benefit of the master or owner by whom the wages are payable. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 275.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Effects, etc., of deserting seamen.—The proper steps for the master of the vessel to take on the desertion of the men are pointed out in this section and in secs. 4597 and 4599, *supra*. If he is unable to find and arrest them, it is his duty to take charge of and hold their clothes, effects, and wages until his arrival at the port at which his voyage terminated. At that port he should, although no forfeiture is as yet declared, deliver the balance of the property, after deducting the expenses occasioned by the desertion, to the shipping commissioner, to be by him paid over to the judge of the Circuit Court of the United States. (1875) 14 Op. Atty-Gen. 520.

Where the clothing and effects of deserting seamen have been sold by a United States consul in a foreign port, and the pro-

ceeds thereof, together with the amount due the seamen as wages, have been turned over to the state department, and the deserters do not appear and cannot be found in due time so that service can be had upon them, the amount, after deducting expenses, etc., should be paid into the treasury to be added to the fund for the relief of sick, disabled, and destitute seamen. (1875) 14 Op. Atty-Gen. 521.

Authority of consul.—A consul has no authority to demand and receive from the master of a vessel the money and effects belonging to a deserter from the vessel. (1875) 14 Op. Atty-Gen. 520.

Account of expenses.—Notwithstanding that the statute does not require the master to furnish an account of expenses occasioned by the desertion to the commissioner, it is evidently fit and proper that he should do so. A knowledge of what expenses are claimed to have been incurred is necessary to enable the commissioner to ascertain what balance, if any, is due to the United

States, and a fair and just account rendered by the master will usually lead to a prompt settlement of the matter without resorting to a suit, which, in the absence of all information on the subject, the commissioner may feel it his duty to bring. *Stevenson v. Hare*, (1874) 2 Sawy. (U. S.) 583, 23 Fed. Cas. No. 13,416.

Deduction of expenses.—The Act does not require an account of expenses occasioned by the desertion to be furnished to the commissioner. The omission to do so does not

forfeit the right of the master to have those wages applied in the first instance to the payment of such expenses, and when sued for double the amount of a balance alleged to be due he may defeat the suit by showing that the expenses have equalled or exceeded the amount of such forfeited wages, and that no balance is due. *Stevenson v. Hare*, (1874) 2 Sawy. (U. S.) 583, 23 Fed. Cas. No. 13,416.

See also R. S. sec. 4550, *supra*, p. 884.

Sec. 4605. [*Appropriation of wages to costs of conviction.*] Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has, in the course of the voyage, been convicted of any offense by any competent tribunal, and rightfully punished therefor, by imprisonment or otherwise, the court hearing the case may direct a part of the wages due to such seaman, not exceeding fifteen dollars, to be applied in re-imbursing any costs properly incurred by the master in procuring such conviction and punishment. [*R. S.*]

Act of June 7, 1872, ch. 322, 17 Stat. L. 275.

This section was amended by the Act of Feb. 27, 1877, ch. 69, 19 Stat. L. 252, by striking out, after the words "of the wages due to such," the word "seamen," appearing

in the section as originally enacted, and substituting therefor the word "seaman," as given in the text.

For exceptions, see Act of June 9, 1874, ch. 280, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4606. [*Penalty for boarding vessels before arrival.* See SHIPPING AND NAVIGATION.]

Sec. 4607. [*Penalty for soliciting seaman as lodger.*] If, within twenty-four hours after the arrival of any vessel at any port in the United States, any person, then being on board such vessel, solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such vessel any effects of any seaman, except under his personal direction, and with the permission of the master, he shall, for every such offense, be punishable by a fine of not more than fifty dollars, or by imprisonment for not more than three months. [*R. S.*]

Act of June 7, 1872, ch. 322, 17 Stat. L. 276.

For exceptions, see Act of June 9, 1874, ch.

260, note thereunder, and provisions following, *supra*, p. 850.

Sec. 4608. [*Carrying sheath-knives prohibited.*] No seaman in the merchant-service shall wear any sheath-knife on shipboard. It shall be the duty of the master of any vessel registered, enrolled, or licensed under the laws of the United States, and of the person entering into contract for the employment of a seaman upon any such vessel, to inform every person offering to ship himself of the provisions of this section, and to require his compliance therewith, under a penalty of fifty dollars for each omission, to be sued for and recovered in the name of the United States, under the direction of the Secretary of the Treasury; one half for the benefit of the informer, and the other half for the benefit of the fund for the relief of sick and disabled seamen. [*R. S.*]

Act of July 27, 1866, ch. 286, 14 Stat. L. 304.

Sec. 4609. [*Penalty for extortion for obtaining employment.*] [*Repealed.*]

This section was as follows:

"SEC. 4609. If any person shall demand or receive, either directly or indirectly, from

any seaman or other person seeking employment as a seaman, or from any person on his behalf, any remuneration whatever other

than the fees hereby authorized, for providing him with employment, he shall, for every such offense, be liable to a penalty of not more than one hundred dollars." Act of June 7, 1872, ch. 322, 17 Stat. L. 264.

It was expressly repealed by the Act of Dec. 21, 1898, ch. 28, sec. 25, *supra*, p. 870.
Cases construing. — See (1895) 21 Op. Atty.-Gen. 284, 285; U. S. v. Kellum, (1881) 7 Fed. Rep. 843, 844.

Sec. 4610. [*Penalties and forfeitures, how recovered.*] All penalties and forfeitures imposed by this Title, for the recovery whereof no specific mode is hereinbefore provided, may be recovered, with costs, in any circuit court of the United States, at the suit of any district attorney of the United States, or at the suit of any person by information to any district attorney in any port of the United States, where or near to where the offense is committed or the offender is found; and if a conviction is had, and the sum imposed as a penalty by the court is not paid either immediately after the conviction, or within such period as the court at the time of the conviction appoints, it shall be lawful for the court to commit the offender to prison, there to be imprisoned for the term hereinbefore provided in case of such offense, the commitment to be terminable upon payment of the amount and costs; and all penalties and forfeitures mentioned in this Title for which no special application is provided, shall, when recovered, be paid and applied in manner following: So much as the court shall determine, and the residue shall be paid to the court and be remitted from time to time, by order of the judge, to the Treasury of the United States, and appropriated as provided for in section forty-five hundred and forty-five: *Provided always*, That it shall be lawful for the court before which any proceeding shall be instituted for the recovery of any pecuniary penalty imposed by this act, to mitigate or reduce such penalty as to such court shall appear just and reasonable; but no such penalty shall be reduced to less than one-third of its original amount: *Provided also*, That all proceedings so to be instituted shall be commenced within two years next after the commission of the offense, if the same shall have been committed at or beyond the Cape of Good Hope or Cape Horn, or within one year if committed elsewhere, or within two months after the return of the offender and the complaining party to the United States; and there shall be no appeal from any decision of any of the circuit courts, unless the amount sued for exceeds the sum of five hundred dollars. [*R. S.*]

Act of June 7, 1872, ch. 322, 17 Stat. L. 276.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

Procedure. — Under the language of this statute prosecution for the recovery of penalties and forfeitures may be had either by information or indictment. U. S. v. Grant, (1893) 55 Fed. Rep. 414.

In name of United States. — In attempting

to mark out the procedure for enforcing the penalties authorized by the several preceding sections of the Act it was designed to permit a civil action for the penalties with quasi-criminal procedure in enforcing that judgment. An action, therefore, is properly brought in the name of the United States as the party plaintiff. U. S. v. Kellum, (1881) 7 Fed. Rep. 843.

Effect of deserters. — See R. S. sec. 4604, *supra*, p. 919.

Sec. 4611. [*Corporal punishment forbidden — penalty.*] Flogging and all other forms of corporal punishment are hereby prohibited on board any vessel, and no form of corporal punishment on board any vessel shall be deemed justifiable, and any master or other officer thereof who shall violate the aforesaid provisions of this section or either thereof shall be deemed guilty of a misdemeanor, punishable by imprisonment not less than three months or more than two years. Whenever any officer other than the master of such vessel shall violate any provisions of this section, it shall be the duty of such master to surrender such officer to the proper authorities as soon as practicable. Any failure upon the part of such master to comply herewith, which failure shall

result in the escape of such officer, shall render said master liable in damages to the person illegally punished by such officer. [R. S.]

This section was amended "to read as" above by the Act of Dec. 21, 1898, ch. 28, sec. 22, 30 Stat. L. 761.

The section originally read as follows:

"Sec. 4611. Flogging on board vessels of commerce is hereby abolished." Act of Sept. 28, 1850, ch. 80, 9 Stat. L. 515.

Corporal punishment.—For cases on this subject, prior to the amendment, see *Payne v. Allen*, (1855) 1 *Sprague* (U. S.) 304, 19 Fed. Cas. No. 10,855; *Bangs v. Little*, (1839) 1 *Ware* (U. S.) 520, 2 Fed. Cas. No. 839; *Charge to Grand Jury*, (1853) 1 *Curt.* (U. S.) 509, 30 Fed. Cas. No. 18,249; *U. S. v. Cutler*, (1853) 1 *Curt.* (U. S.) 501, 25 Fed. Cas. No. 14,910; *Carleton v. Davis*, (1844) 2 *Ware* (U. S.) 225, 5 Fed. Cas. No. 2,408; *Dorrell v. Schwerman*, (1901) 111 *Fed. Rep.* 209; *U. S. v. Trice*, (1887) 30 *Fed. Rep.* 490.

Release.—Where a seaman on a whaling voyage, upon his discharge in a foreign port, signed a writing acknowledging that he had received a certain sum in full of his share of the proceeds of the voyage and relinquishing all claims against the owners, master, and officers, it was held that the relinquishment was only of the claim for which he had received compensation, and not of claims for personal violence committed by the master. *Payne v. Allen*, (1855) 1 *Sprague* (U. S.) 304, 19 Fed. Cas. No. 10,855.

Nominal damages for torts.—The admiralty will not entertain suits for mere nominal damages in cases of personal torts not involving any subject-matter beyond such a claim for damages. *Barnett v. Luther*, (1853) 1 *Curt.* (U. S.) 434, 2 Fed. Cas. No. 1,025.

Sec. 5347. [Maltreatment of crew by officers of vessels.] Every master or other officer of any American vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, who, without justifiable cause, beats, wounds, or imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, or inflicts upon them any cruel and unusual punishment, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than five years, or by both. [R. S.]

Act of March 3, 1835, ch. 40, 4 Stat. L. 776.

This section was amended by the Act of March 3, 1897, ch. 389, sec. 18, 29 Stat. L. 691, by omitting after the words "jurisdiction of the United States, who," the words "from malice, hatred, or revenge, and" appearing in the section as originally enacted. The amendatory section also contains the provision set forth in the following text, p. 924.

Summary trials for offenses against navigation laws. See SHIPPING AND NAVIGATION.

Scope of notes.—The cases hereunder were all decided prior to the amendment of R. S. sec. 4611 abolishing corporal punishment, and must be read in the light of such amendment.

Who liable as officer.—Any one who by authority exercises the function of command over the actions of the crew while on duty, or any of them, is an officer *pro hac vice*, and liable to the penalties of this statute as such, if he violate its provisions. *U. S. v. Trice*, (1887) 30 *Fed. Rep.* 490.

None but the master ever had the power to punish, or has now; but if any assume it by virtue of his office, be that office what it may, thereby he becomes to all intents and purposes of this statute amenable to all the penal consequences if he abuse that power which he assumes. *U. S. v. Trice*, (1887) 30 *Fed. Rep.* 490.

Liability of master for acts of others.—The master when on board has generally the sole authority to authorize punishment to be inflicted on any of the crew; and if he is present when any punishment is inflicted

by a subordinate officer, and can prevent it and does not, he is personally responsible for the act. And neither the mate nor any subordinate officer has authority to punish any seaman, even for improper behavior or misconduct to himself personally, when the master is on board, except by the authority express or implied of the master. *U. S. v. Taylor*, (1837) 2 *Sumn.* (U. S.) 584, 28 Fed. Cas. No. 16,442.

The word "crew" was intended to include the officers as well as the common seamen, and the master is liable under the statute for an imprisonment of the first mate of the ship. *U. S. v. Winn*, (1838) 3 *Sumn.* (U. S.) 209, 28 Fed. Cas. No. 16,740.

The Act was intended to protect every individual composing the ship's crew, in the ordinary acceptance of the term, from an abuse of power by those in higher authority; and while the ordinary seamen are protected from injury by the "master or other officer" the inferior officers have a like protection from injury by the master of the ship. *U. S. v. Winn*, (1838) 1 *Law. Rep.* 63, 28 Fed. Cas. No. 16,739a.

One who secretes himself on board a vessel before sailing and discovers himself after the vessel is at sea is not one of the crew though the master requires him to work as a condition for his having food, and he does work. *U. S. v. Small*, (1855) 2 *Curt.* (U. S.) 241, 27 Fed. Cas. No. 16,314.

Punishment by crew.—There is a limit to the authority of the master. The crew are not bound to inflict punishment upon his mere caprice. Any seaman has a right to

refuse to inflict punishment unless some justifiable cause was pointed out to him. He has a right to do this for his own protection. *U. S. v. Winn*, (1838) 1 Law. Rep. 63, 28 Fed. Cas. No. 16,739a.

Justifiable cause.—If the punishment inflicted is flogging it is without justifiable cause. *U. S. v. Cutler*, (1853) 1 Curt. (U. S.) 501, 25 Fed. Cas. No. 14,910.

In case of desertion and persistent refusal to perform duty, the master may inflict punishment and use means of coercion; but they must not be such as would be permanently injurious to the health or constitution of the seaman. *U. S. v. Alden*, (1844) 1 Sprague (U. S.) 95, 24 Fed. Cas. No. 14,427.

Quantum of punishment.—When it is apparent that punishment is merited, the court will not undertake to adjust very exactly, according to its own ideas of fitness and propriety, the balance between the gravity of the offense and the quantum of punishment, and will not award damages unless the punishment is manifestly excessive. *Butler v. McClellan*, (1831) 1 Ware (U. S.) 220, 4 Fed. Cas. No. 2,242.

Punishment by subordinate.—The authority of any subordinate officer to punish exists only when it is at the very moment absolutely required by the necessities of the ship's service to compel the performance of duty. The master stands in this respect in the relation of a parent to the seaman, and is bound to exercise his own judgment as to the time, the manner, and the circumstances under which punishment is to be inflicted on the crew for any past misdemeanors or any present misdemeanors not immediately and materially affecting the ship's service or security. *U. S. v. Taylor*, (1837) 2 Sumn. (U. S.) 584, 28 Fed. Cas. No. 16,442.

Malice defined.—See *U. S. v. Cutler*, (1853) 1 Curt. (U. S.) 501, 25 Fed. Cas. No. 14,910.

Corporal punishment.—See *U. S. v. Trice*, (1887) 30 Fed. Rep. 490; *Riley v. Allen*, (1886) 23 Fed. Rep. 46.

Coercive measures.—The master of a ship has a right to use coercive measures to compel obedience to his lawful orders. *U. S. v. Alden*, (1844) 1 Sprague (U. S.) 95, 24 Fed. Cas. No. 14,427.

Resistance.—If a seaman is attacked without provocation or disobedience on his part, he can defend himself; and under all excessive blows and punishment for disrespect or disobedience he can justify as a child or apprentice or scholar resisting the excess. *Fuller v. Colby*, (1846) 3 Woodb. & M. (U. S.) 1, 9 Fed. Cas. No. 5,149.

Jurisdiction.—The law of the United States, especially this section, follows an American vessel wherever she may be on navigable waters, so that an offense committed on board such vessel is an offense against the United States though the vessel be in the harbor or river of a foreign country. *U. S. v. Bennett*, (1877) 3 Hughes (U. S.) 466, 24 Fed. Cas. No. 14,574.

The courts of the United States have jurisdiction over a tort committed by one of the ship's company on another on board of a

ship or vessel of the United States while lying in the harbor, although she may be within the body of a county. *Roberts v. Skolfield*, (1858) 3 Ware (U. S.) 184, 20 Fed. Cas. No. 11,917.

Extradited for different offense.—A prisoner having been extradited upon a charge of murder on the high seas under R. S. sec. 5339, the Circuit Court has no jurisdiction to put him to trial upon an indictment under this section charging him with cruel and unusual punishment of the same man; he being one of the crew of an American vessel of which the defendant was an officer and such punishment consisting of the identical acts proved in the extradition proceedings. *U. S. v. Rauscher*, (1886) 119 U. S. 407.

Indictment.—The Act describes four distinct offenses,—beating or wounding, imprisoning, deprivation of suitable food and nourishment, infliction of any cruel and unusual punishment. Each of these is a substantive criminal act when proceeding without justifiable cause, and one of these offenses cannot be properly described in the indictment by words used in the Act of Congress to describe another offense. *U. S. v. Collins*, (1854) 2 Curt. (U. S.) 194, 25 Fed. Cas. No. 14,836.

Short allowance.—The captain is bound to provide a reasonable surplus, a reasonable margin, for all known contingencies of the sea; and if he sails without doing so, and in consequence of not having made such provision there is a short allowance, the withholding is not justifiable, because he ought to have seen that the vessel was supplied with proper provisions. *U. S. v. Reed*, (1897) 86 Fed. Rep. 308.

Due to change of route.—If a master meets with difficulty, with trouble at sea, if he be blown out of his course, it is his duty before changing his route for a very much longer one to exercise exactly the same care to see that he is properly provisioned for the new voyage as for the former route; and to provision his vessel by any practical methods that the circumstances reasonably admit. *U. S. v. Reed*, (1897) 86 Fed. Rep. 308.

Due to detention.—If a vessel sails on her voyage well provisioned with all that is required, and by stress of weather she is detained long beyond the usual passage, and there are no ports where any food can be procured, so that the allowance must be shortened in order to enable the vessel to reach a port, it is very plain that the shortening of the allowance is necessary, and the crew are therefore put on what is called a short allowance, that is, shorter than is prescribed. That is a justifiable cause. Under those circumstances the necessary food may be lessened, and there is no criminality in that, because it is justifiable. *U. S. v. Reed*, (1897) 86 Fed. Rep. 308.

Elements of the offense.—In *U. S. v. Reed*, (1897) 86 Fed. Rep. 308, prior to the amendment of this section, it was held that the three main elements which enter into the offense of withholding suitable food and nourishment, and which are to be considered

by the jury, are, first, whether there was a lack of suitable food supply; second, if there was, then whether this was withheld without justifiable cause; and finally, if so, whether this was done for malice, hatred, or revenge. In order to convict a defendant the jury must find that each of these three elements existed in the case and beyond a reasonable doubt. See also U. S. v. Taylor, (1837) 2 Sumn. (U. S.) 584, 28 Fed. Cas. No. 16,442.

Malice.—Prior to the amendment of this section it was held in U. S. v. Reed, (1897) 86 Fed. Rep. 308, that a captain of a vessel is not to be condemned for any mere error of judgment, nor for mere negligence, if it was nothing more than that, in providing a proper supply of food for the crew; but he is to be condemned if the additional element of malice in connection with them is found to exist, not as a malignant intention to do a particular harm to anybody, but in the

sense of a wilful disregard of what he knew to be his duty. The wilful disregarding of an obligation which the captain knew and understood, knowing that his act was liable to produce injury to the crew, is malice in the sense of the law. See also U. S. v. Taylor, (1837) 2 Sumn. (U. S.) 584, 28 Fed. Cas. No. 16,442.

Evidence.—The fact that every seaman on board a ship was afflicted with scurvy is sufficient evidence for the jury to attribute it to the cause of the lack of proper variety of food, and particularly a vegetable food, where there is no other evidence showing some other cause for the prevalence of the disorder. U. S. v. Reed, (1897) 86 Fed. Rep. 308.

What constitutes short allowance.—See R. S. secs. 4568, 4612, *infra*, pp. 893, 930.

Civil liability.—See Butler v. McClellan, (1831) 1 Ware (U. S.) 220, 4 Fed. Cas. No. 2,242; Riley v. Allen, (1885) 23 Fed. Rep. 46.

SEC. 18. [R. S. sec. 4611 not affected.] * * * Nothing herein contained shall be construed to repeal or modify section forty-six hundred and eleven of the Revised Statutes. [29 Stat. L. 691.]

This is from the Act of March 3, 1897, ch. 389, "An Act To amend the laws relating to navigation." The omitted part of the sec-

tion amends R. S. sec. 5347, and is set forth in the preceding text.

Sec. 5359. [Inciting revolt or mutiny on shipboard.] If any one of the crew of any American vessel on the high seas, or other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master, or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master, or other commanding officer thereof, he shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than five years, or by both such fine and imprisonment. [R. S.]

Act of March 3, 1835, ch. 40, 4 Stat. L. 776; Act of April 30, 1790, ch. 9, 1 Stat. L. 115.

Effect of later Acts.—This section is not repealed by the provisions of the Act of June 9, 1874, ch. 260. *In re Simpson*, (1901) 119 Fed. Rep. 620.

This section was not repealed by implication by paragraph 7 of R. S. sec. 4596, which paragraph was omitted from that section by the amending Act of Dec. 21, 1898, ch. 28, sec. 19. *In re Simpson*, (1901) 119 Fed. Rep. 620.

Application of section.—The provisions of this section apply to the mate and other officers of a vessel as well as to ordinary seamen. *U. S. v. Huff*, (1882) 13 Fed. Rep. 630.

It was not the intention of these statutes to make the courts of the United States a place to discipline every member of a ship's

crew who is guilty of simple disobedience of the master's orders, but every case of mere resistance to his free and lawful exercise of authority and command on board is so punishable if accompanied by force, fraud, intimidation, violence, or conspiracy among the men. *U. S. v. Huff*, (1882) 13 Fed. Rep. 630.

American vessel.—The character of the vessel must be proved to be an American vessel, but the title of the ship may be proved by parol. *U. S. v. Crawford*, (1843) 25 Fed. Cas. No. 14,890.

On the trial of an indictment for an endeavor to make a revolt on board of an American vessel in a foreign port it is not necessary to give documentary proof establishing the national character of the vessel, but it is sufficient to prove orally that she is owned by an American citizen. *U. S. v.*

Seagrist, (1860) 4 Blatchf. (U. S.) 420, 27 Fed. Cas. No. 16,245.

To render a vessel American so far as to punish offenses on board of her, it is enough to show that she sailed from and to an American port, and was apparently owned and controlled by citizens of the United States. *U. S. v. Peterson*, (1846) 1 Woodb. & M. (U. S.) 305, 27 Fed. Cas. No. 16,037.

Vessel not registered or licensed. — A ship engaged in a whaling voyage without having surrendered her register or taken out an enrollment and license pursuant to law is not an American ship within the purview of this section, and an indictment will not hold under this section against the crew for an endeavor to make a revolt. *U. S. v. Rogers*, (1838) 3 Sumn. (U. S.) 342, 27 Fed. Cas. No. 16,189.

Where the crew of an American whaling vessel were convicted of an attempt to revolt on a whaling voyage to the South seas, and it appeared on the trial that the vessel had not been enrolled and licensed under the Act of Congress, the case did not come within the operation of this Act, the prisoners were improperly convicted, and they were entitled to an arrest of judgment. *U. S. v. Jenkins*, (1843) 26 Fed. Cas. No. 15,473a.

Foreigners. — Persons who were not citizens of the United States, and had enlisted on board of an American vessel, could not be punished for disobedience of orders in the absence of a treaty with the government to which they belonged, unless such act of disobedience amounted to a violation of the law of nations. *U. S. v. Crawford*, (1843) 25 Fed. Cas. No. 14,890.

Foreign seamen on board American ships are as much subject to punishment for disobedience or violence as Americans, and are alike to be protected and redressed on their return home. *U. S. v. Peterson*, (1846) 1 Woodb. & M. (U. S.) 305, 27 Fed. Cas. No. 16,037.

Foreign port. — An endeavor to commit a revolt is an offense if committed in a foreign port. The section does not confine the penalty to cases on the high seas. *U. S. v. Keefe*, (1824) 3 Mason (U. S.) 475, 26 Fed. Cas. No. 15,509.

Seamen not articulated. — Seamen of the United States, put on board a vessel of the United States by a consul, are within the meaning of this Act, and they are bound by the same obligations which exist in cases of articulated seamen. *U. S. v. Sharp*, (1815) Pet. (C. C.) 118, 27 Fed. Cas. No. 16,264.

Who are seamen. — A cooper of the ship is a seaman within the provisions of the Act. *U. S. v. Thompson*, (1832) 1 Sumn. (U. S.) 168, 28 Fed. Cas. No. 16,492.

Disrated mate. — The fact that a mate of a vessel is deposed from his position as mate does not take him from under the authority of the captain as long as he is on board, and while he or any member of the crew remains on board, no matter in what capacity, he is bound to obedience and subordination to all proper control and discipline to the ship's officers in authority over him. *U. S. v. Huff*, (1882) 13 Fed. Rep. 630.

Change of master. — The contract of seamen for the voyage is not suspended or extinguished by the death, removal, or resignation of the original master; but they are bound to perform the voyage under any person who is lawfully substituted in his stead. *U. S. v. Cassidy*, (1837) 2 Sumn. (U. S.) 582, 25 Fed. Cas. No. 14,745.

The crew of a ship who have signed shipping articles for a voyage under a particular master without any clause providing for a change of master are not discharged from the articles by the dismissal of the master by reason of sickness or any other reasonable cause, and the appointment of a new master; but they are bound to obey the new master. If in such case they combine together to refuse all duty on board and to refuse obedience to the new master, that is an endeavor to make a revolt. *U. S. v. Haines*, (1829) 5 Mason (U. S.) 272, 26 Fed. Cas. No. 15,275.

Disability of master. — If the master of a ship after the commencement of the voyage is by sickness disabled from pursuing it, and a new master is appointed, the shipping contract with the seamen is not dissolved thereby. *U. S. v. Hamilton*, (1818) 1 Mason (U. S.) 443, 26 Fed. Cas. No. 15,291.

Jurisdiction. — On an indictment for an endeavor to make a revolt in a ship it is not necessary to prove that it was committed on the high seas. *U. S. v. Hamilton*, (1818) 1 Mason (U. S.) 443, 26 Fed. Cas. No. 15,291.

An indictment lies in the United States Circuit Court in admiralty against the crew of a vessel who had endeavored to commit a revolt and mutiny on board of the ship while she lay at anchor about sixty yards from the wharf in the city of New York, ready for sea, and in the stream of the East river where the tide ebbs and flows. *U. S. v. Lynch*, (1843) 26 Fed. Cas. No. 15,648.

Although the state courts might have jurisdiction of certain offenses committed on board of vessels while lying within the municipal territory of such state, yet the Circuit Court of the United States would take jurisdiction and exercise their authority in cases of mutiny and revolt, or endeavor to make a revolt, on board of such vessels, by virtue of the power conferred in the Act. *U. S. v. Lynch*, (1843) 26 Fed. Cas. No. 15,648.

Indictment. — In an indictment for an endeavor to commit a revolt and for confining the master of a ship on the high seas, it is not necessary to allege that the master was at the time in the peace of the United States or that he was an American citizen. *U. S. v. Thompson*, (1832) 1 Sumn. (U. S.) 168, 28 Fed. Cas. No. 16,492.

The crime of endeavoring to make a revolt on board a vessel is one against the master of the vessel, and it is sufficient to charge it with the words of the Act to give the court cognizance of it. *U. S. v. Seagrist*, (1860) 4 Blatchf. (U. S.) 420, 27 Fed. Cas. No. 16,245.

Where an indictment against several prisoners charges all simply and alike with

"making a revolt," this is not such a clear and specific description of the offense of each of the defendants as may be given under the language of the Act, and is insufficient, there being four distinct classes of unlawful acts which are included by the section in the definition of a maritime revolt. *U. S. v. Almeida*, (1847) 24 Fed. Cas. No. 14,433.

If there be two counts in one indictment for offenses committed at the same time and place and of the same class, but different in degree, as one for a revolt, and another for an attempt to excite it, the judgment will not be arrested, though a verdict of guilty is returned on both. *U. S. v. Peterson*, (1846) 1 Woodb. & M. (U. S.) 305, 27 Fed. Cas. No. 16,037.

Variance.—If in an indictment for an endeavor to commit a revolt it is averred to be on the high seas, the allegation is not material to be proved; and if the offense is proved to have been committed in a foreign port, it is sufficient. *U. S. v. Keefe*, (1824) 3 Mason (U. S.) 475, 26 Fed. Cas. No. 15,509.

An indictment for confining the captain and for an assault with a dangerous weapon committed on the high seas in the "outer road" off St. Domingo, in a vessel belonging to citizens of the United States, is supported by proving those offenses to have been done in the "inner" road and in port. *U. S. v. Stevens*, (1825) 4 Wash. (U. S.) 547, 27 Fed. Cas. No. 16,294.

Evidence.—The log book kept by the master is not evidence in an indictment for a revolt and confining the master. *U. S. v. Sharp*, (1815) Pet. (C. C.) 118, 27 Fed. Cas. No. 16,264.

On charge of revolt against seamen, a copy of the shipping articles purporting to be signed by the prisoners cannot be given in evidence to show that the prisoners were part of the crew, without proof of loss or destruction of the original articles. The original articles cannot be given in evidence unless the handwriting of the prisoner is proved. *U. S. v. Doughty*, (1855) 25 Fed. Cas. No. 14,987.

"Endeavor to make a revolt" defined.—"The offense consists in the endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of her commander with intent to remove him from his command, or against his will to take possession of the vessel by assuming the government and navigation of her, or by transferring their obedience from the lawful commander to some other person." *U. S. v. Kelly*, (1826) 11 Wheat. (U. S.) 417; *U. S. v. Smith*, (1811) 3 Wash. (U. S.) 78, 27 Fed. Cas. No. 16,344.

"In truth, I consider the definition given by the Supreme Court not to have been designed to have more than an affirmative operation; that is, to declare that such Acts would amount to the offense, and not negatively that none others would." *Story, J.*, in *U. S. v. Haines*, (1829) 5 Mason (U. S.) 272.

Any conspiracy to accomplish the usurpation of the authority and command of the ship and to overthrow that of the master or

commanding officer, or to resist a lawful command of the master for such purpose, or any endeavor to stir up others of the crew to such resistance, is an endeavor to commit a revolt, within the meaning of the section. *U. S. v. Hemmer*, (1825) 4 Mason (U. S.) 105, 26 Fed. Cas. No. 15,345; *U. S. v. Smith*, (1816) 1 Mason (U. S.) 147, 27 Fed. Cas. No. 16,337.

Who are officers.—The pilot is an officer of the ship when on board to pilot the vessel to or from the sea, and the crew are bound to obey his orders as such; but when the captain is on board, he is master of the vessel, and the orders of the pilot are in law considered as the master's. *U. S. v. Forbes*, (1845) Crabbe (U. S.) 558, 25 Fed. Cas. No. 15,129.

The pilot of a vessel cleared at the custom house and ready for sea with the crew on board is an officer of said ship and vessel within the meaning, spirit, and intent of the Act. *U. S. v. Lynch*, (1843) 26 Fed. Cas. No. 15,648.

While the master and mates of the vessel had gone on shore, the pilot had authority to order the crew to duty, and a disobedience of his orders rendered the prisoners liable to indictment under the Act. *U. S. v. Lynch*, (1843) 26 Fed. Cas. No. 15,648.

Intent.—An endeavor to commit a revolt may be complete, not merely by stirring up, encouraging, or combining with others of the ship's crew to produce a general disobedience of all orders, but also by stirring up, encouraging, and combining with any one or more of the crew to produce a deliberate disobedience to any one lawful order of the master or other officers; for to this extent it is an endeavor to commit a mutiny and to overthrow the lawful authority of the master and officers. But there must be a clear intent to produce such a revolt, and not merely gross or insolent language used by the party which may, undesignedly, encourage others to such disobedience. *U. S. v. Thompson*, (1832) 1 Sumn. (U. S.) 168, 28 Fed. Cas. No. 16,492.

Endeavor to incite others.—The offense is not committed if the party does not attempt or endeavor to combine or incite others of the crew to aid in his unlawful purposes. *U. S. v. Smith*, (1816) 1 Mason (U. S.) 147, 27 Fed. Cas. No. 16,337.

To constitute an endeavor to commit a revolt it is necessary that there should be some effort or act to stir up others of the crew to disobedience of the master. *U. S. v. Savage*, (1830) 5 Mason (U. S.) 460, 27 Fed. Cas. No. 16,225.

To sustain an indictment for an endeavor to commit a revolt a confederacy or combination must be shown between two or more of the seamen to refuse to do further duty on board the ship and to resist the lawful commands of the officers. *U. S. v. Cassidy*, (1837) 2 Sumn. (U. S.) 582, 25 Fed. Cas. No. 14,745.

Prior combination not essential.—Neither a previous deliberate combination for mutual aid and encouragement nor any preconceived plan is necessary to bring it within the Act.

U. S. v. Morrison, (1833) 1 Sumn. (U. S.) 448, 26 Fed. Cas. No. 15,818.

Combination not to do duty.—If the crew combine together not to do duty it is an endeavor to make a revolt, although no orders are actually given afterwards. U. S. v. Barker, (1829) 5 Mason (U. S.) 404, 24 Fed. Cas. No. 14,516.

If the crew combine together to refuse to do duty and actually refuse until the master complies with some improper request on their part, it is an endeavor to make a revolt. U. S. v. Gardner, (1829) 5 Mason (U. S.) 402, 25 Fed. Cas. No. 15,188.

A mere refusal to do duty on the part of a seaman without any attempt to encourage or aid or influence any others of the crew to the same act would certainly not amount to an endeavor to commit a revolt. There must be some effort or act to incite or encourage others to disobedience or some common combination or understanding to act together for mutual encouragement or support in such disobedience. U. S. v. Haines, (1829) 5 Mason (U. S.) 272, 26 Fed. Cas. No. 15,275.

A mere act of disobedience to a lawful command of the officers is not of itself an endeavor to make a revolt. But to amount to the offense it must be combined with an attempt to incite others of the crew to a general resistance or disobedience of orders or a general neglect and refusal of duty. U. S. v. Smith, (1816) 1 Mason (U. S.) 147, 27 Fed. Cas. No. 16,337.

A mere passive act of disobedience on the part of a single member of the crew, unaccompanied by any element of force, intimidation, or fraud upon the master or other officer in command, and free from all conspiracy with and incitement of others of the crew to join in the act, is not a violation of this section or section 5360. U. S. v. Huff, (1882) 13 Fed. Rep. 630.

A mere disobedience of orders by a seaman without encouraging or aiding or co-operating with others in the same act is not an endeavor to commit a revolt. U. S. v. Thompson, (1832) 1 Sumn. (U. S.) 168, 28 Fed. Cas. No. 16,492.

When one of the crew came on deck, apparently to see what was the cause of a disturbance going on, and was ordered peremptorily to go below, and neglected to do so, he was guilty of disobedience of orders and might be punished under the Act of Congress for disobedience of orders and an endeavor to make a revolt. U. S. v. Roberts, 27 Fed. Cas. No. 16,172.

Combination to resist single order.—If the crew were to combine together to resist a single lawful order of the master, or to compel him by force to yield up his authority in a single case, and were to proceed in the execution of their purpose, all their acts done towards its accomplishment might perhaps be properly deemed endeavors to make a revolt. U. S. v. Smith, (1816) 1 Mason (U. S.) 147, 27 Fed. Cas. No. 16,337.

Resisting punishment.—Where the master directed one of his crew to be punished for gross misbehavior, and the crew interposed

and prevented the infliction of the punishment, compelling the master by acts of violence and intimidation to desist therefrom, this was held to be an endeavor to commit a revolt within the Act. U. S. v. Morrison, (1833) 1 Sumn. (U. S.) 448, 26 Fed. Cas. No. 15,818.

Such combination and intimidation may be lawful if, from the improper conduct of the captain, the crew have good reason to believe, and do believe, that they will be subjected to unlawful and cruel or oppressive treatment, or that a great wrong is about to be inflicted on one of their number; they have a right to take reasonable measures for his or their protection. U. S. v. Borden, (1857) 1 Sprague (U. S.) 374, 24 Fed. Cas. No. 14,625.

Resisting sailing of unseaworthy vessel.—On an indictment for an endeavor to commit a revolt, it is sufficient defense of the parties accused that the combination charged as an endeavor was to compel the master to return into port because of the unseaworthiness of the vessel, if they act *bona fide* and the vessel is actually unseaworthy; so also if they act *bona fide* and upon reasonable grounds and apparent unseaworthiness, and it is doubtful whether the vessel be seaworthy or not. But if the vessel in such case be clearly seaworthy, it is no defense. U. S. v. Ashton, (1834) 2 Sumn. (U. S.) 13, 24 Fed. Cas. No. 14,470.

Resisting deviation.—Where there is a deviation from the voyage in the shipping articles, a refusal of the seamen subsequently to do duty on that account does not amount in law to an endeavor to commit a revolt. U. S. v. Matthews, (1837) 2 Sumn. (U. S.) 470, 26 Fed. Cas. No. 15,742.

Where the refusal of seamen to proceed on a voyage has been charged against them criminally as constituting the offense of "endeavoring to make a revolt," or is set up as working a forfeiture of wages, the courts refer at once to the shipping articles for the purpose of determining the rights and responsibilities between the sailor and the public and the master and owners. The law upon this subject is unequivocal and imperative, declaring that the shipping articles must contain a statement of the precise voyage or voyages for which the sailor contracts, and if a deviation from such speculation is carried out not caused by a "vis major," without the consent of the mariner, by going to intermediate ports and landing or receiving on board passengers or freight, or an ulterior voyage is attempted to be superadded or substituted, and the sailors refuse to do further duty, such conduct on their part is justifiable and does not either forfeit their wages or render them liable criminally under the Act in question for an "endeavor to make a revolt." U. S. v. White, (1848) 28 Fed. Cas. No. 16,683.

Where seamen on board of a vessel refused to do duty on the ground that they were not bound to go the voyage by the terms of the shipping articles, and to do the duty which they were ordered to do, it was held that

they should have made such objection at the time of the disobedience of orders. *U. S. v. Lynch*, (1843) 28 Fed. Cas. No. 15,648.

Where seamen shipped under articles for a voyage from New Orleans to Havre, thence to one or more ports in Europe, and thence back to a port of discharge in the United States, and the master, intending to make Charleston the final port of discharge, stopped at New York, and landed passengers and freight, it was held that the seamen were not guilty of the offense of "endeavoring to make a revolt" in refusing to get the ship under way and doing further duty for the purpose of proceeding to Charleston. *U. S. v. White*, (1848) 28 Fed. Cas. No. 16,683.

Detention of vessel.—A combination by the crew to prevent the vessel from going to sea pursuant to the orders of the master is an attempt to commit a revolt. *U. S. v. Nye*, (1855) 2 Curt. (U. S.) 225, 27 Fed. Cas. No. 15,906.

Effort to resist arrest.—A seaman is not justified in drawing and brandishing a knife or an axe, using them to prevent his arrest, whether for an original offense or the use of the knife. *Fuller v. Colby*, (1846) 3 Woodb. & M. (U. S.) 1, 9 Fed. Cas. No. 5,149.

Resisting injury.—If the master use an unlawful weapon or the seaman is exposed to danger of his life or limbs, he may resort to any necessary species of defense to avoid this danger. *U. S. v. Smith*, (1811) 3 Wash. (U. S.) 78, 27 Fed. Cas. No. 16,344.

Mere offensive or insolent language does not constitute this crime. *U. S. v. Forbes*, (1845) Crabbé (U. S.) 558, 25 Fed. Cas. No. 15,129.

CONFINING MASTER.

General definition.—The confinement forbidden by the statute need not necessarily be a physical confinement of the master's person by depriving him of the use of his limbs or shutting him in the cabin. If he is prevented by either force or intimidation from the free use of every part of the vessel, or by threats of bodily injury in the performance of his proper functions as master, or if he is in any way restrained by conduct on the part of his crew, or any of them, such as would reasonably intimidate a firm man, in every such or like case it is in law a confinement. *U. S. v. Huff*, (1882) 13 Fed. Rep. 630; *U. S. v. Sharp*, (1815) Pet. (C. C.) 118, 27 Fed. Cas. No. 16,264; *U. S. v. Smith*, (1811) 3 Wash. (U. S.) 78, 27 Fed. Cas. No. 16,344; *U. S. v. Hemmer*, (1825) 4 Mason (U. S.) 105, 26 Fed. Cas. No. 15,345.

The master going armed to every part of the vessel, if it was necessary for his safety that he should so protect himself, does not alter the case. *U. S. v. Bladen*, (1816) Pet. (C. C.) 213, 24 Fed. Cas. No. 14,606.

The offense.—In *The Ulysses*, (1800) 5 Law. Rep. 241, 24 Fed. Cas. No. 14,330, it was held that the offense of revolt or that of confining the master was not a felony.

Must be felonious.—To constitute the offense of confining the captain the act of confinement must be feloniously done. *U.*

S. v. Henry, (1824) 4 Wash. (U. S.) 428, 26 Fed. Cas. No. 15,351.

Intent.—To confine the master without lawful authority for so doing is a misdemeanor, consummated in doing the act, whether accompanied by an endeavor to commit a revolt or any other offense. *Lander v. U. S.*, (1844) 14 Fed. Cas. No. 8,039.

It can accordingly be no protection to the accused to prove he had no other offense in view and that he seized the captain only to restrain him doing what the sailor wished to prevent. He must prove more—that the confining was justifiable, or that it was under circumstances from which it might be supposed to be involuntary on the part of the seaman. *Lander v. U. S.*, (1844) 14 Fed. Cas. No. 8,039; *U. S. v. Savage*, (1830) 5 Mason (U. S.) 460, 27 Fed. Cas. No. 16,225.

Resisting master.—If in endeavoring to resist force necessary to bring a seaman to lawful obedience the seaman confined the master, such act would be unlawful, and an offense within the statute. *Lander v. U. S.*, (1844) 14 Fed. Cas. No. 8,039.

Assault and battery by a seaman upon the master of a vessel does not amount to a confinement of the commander nor an attempt to excite a revolt within the Act of Congress. *U. S. v. Lawrence*, (1802) 1 Cranch (C. C.) 94, 26 Fed. Cas. No. 15,575.

Momentary restraint.—Seizing the person of the master, although the restraint be but momentary, is a confinement prohibited by the law, and such conduct is not excused or justified by a previous battery on the seaman, whose duty it was to have obeyed the command of the captain which was enforced by such battery. *U. S. v. Bladen*, (1816) Pet. (C. C.) 213, 24 Fed. Cas. No. 14,606.

The seizing of the master and holding him back against the ship's rail against his will is, in the sense of the Act, a clear case of confinement of the master; and it matters not whether it was for a long or short time, for a minute or for an hour or for a day. The law looks to the fact and not to the duration of the confinement. *Lander v. U. S.*, (1844) 14 Fed. Cas. No. 8,039; *U. S. v. Bladen*, (1816) Pet. (C. C.) 213, 24 Fed. Cas. No. 14,606; *U. S. v. Thompson*, (1832) 1 Sumn. (U. S.) 168, 28 Fed. Cas. No. 16,492.

Seizing person.—If the person of the master is in fact seized, or if he is in fact held in personal restraint (whether for a long or a short time is immaterial), it is a confinement within the meaning of the statute. *U. S. v. Savage*, (1830) 5 Mason (U. S.) 460, 27 Fed. Cas. No. 16,225.

Purpose of seizure.—It matters not that the seizure or restraint was principally or wholly for the purpose of inflicting personal chastisement upon the master; that it was to beat or to wound him, and not to deprive him of his command or authority on board the ship; or that the confinement was a means of personal punishment and not an end. The law looks to the act and not merely to the intent. If the seizure is un-

lawful it is a confinement. The law esteems the person of the master sacred, and protects him from all restraint which is unlawful. *U. S. v. Savage*, (1830) 5 Mason (U. S.) 460, 27 Fed. Cas. No. 16,225.

Justification for restraint.—A master of a vessel may so conduct himself as to justify the officers and crew in placing restraint upon him to prevent his committing acts which might endanger the lives of the seamen or the lives of all persons on board; but such measures should cease the moment the occasion for them ceases. *U. S. v. Sharp*, (1815) Pet. (C. C.) 118, 27 Fed. Cas. No. 16,264; *U. S. v. Thompson*, (1832) 1 Sumn. (U. S.) 168, 28 Fed. Cas. No. 16,492.

Every confinement is not an offense within the Act. It must be an illegal confinement or restraint. If the master is about to do an illegal act, and especially to do a felony, a seaman may lawfully confine or restrain him. So a seaman may confine the master in justifiable self-defense. *U. S. v. Thompson*, (1832) 1 Sumn. (U. S.) 168, 28 Fed. Cas. No. 16,492.

Accessories.—One who joins in the general conspiracy and by his presence countenances acts of violence, but who does not individually use force or threats to compel the master to resign the command of his vessel, is guilty of the offense of confining the master. *U. S. v. Sharp*, (1815) Pet. (C. C.) 118, 27 Fed. Cas. No. 16,264.

Sec. 5360. [*Revolt and mutiny on shipboard.*] If any one of the crew of an American vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, he is guilty of a revolt and mutiny, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor not more than ten years. [*R. S.*]

Act of March 3, 1835, ch. 40, 4 Stat. L. 775; Act of April 30, 1790, ch. 9, 1 Stat. L. 113.

Revolt defined.—A revolt is an open rebellion or mutiny of the crew against the authority of the master in the command, navigation, or control of the ship. If the crew in a mutiny were to displace him from the actual command of the ship and appoint another in his stead, that would clearly be a revolt. It would be an actual usurpation of his authority on board of the ship and an ouster of him from the possession and control of it. *U. S. v. Haines*, (1829) 5 Mason (U. S.) 272, 26 Fed. Cas. No. 15,275; *U. S. v. Forbes*, (1845) Crabbe (U. S.) 558, 25 Fed. Cas. No. 15,129.

The unlawful acts which now fall within the definition of a maritime revolt are distributed by the language of this section into four categories or classes: (1) simple resistance to the exercise of the captain's authority; (2) the deposition of the captain from his command; (3) the transfer of the captain's power to a third person; (4) the usurpation of the captain's power by the party accused. *U. S. v. Almeida*, (1847) 24 Fed. Cas. No. 14,433.

Master compelled to do will of crew.—There may be a revolt independent of the appointment of another to the command. If the crew should compel the master against his will, by threats or otherwise, to navigate the ship or manage her concerns according to their own directions, and prevent him from the free exercise of his own judgment, that would be an effectual usurpation of the command of the ship, and in the sense of law a

revolt. *U. S. v. Haines*, (1829) 5 Mason (U. S.) 272, 26 Fed. Cas. No. 15,275; *U. S. v. Forbes*, (1845) Crabbe (U. S.) 558, 25 Fed. Cas. No. 15,129.

A positive refusal to perform any duty on board until the master has yielded to some illegal demand of the crew, when it has produced a suspension of his power of command, or when by a general combination the crew refuse obedience to the lawful orders of the master, is a revolt. *U. S. v. Forbes*, (1845) Crabbe (U. S.) 558, 25 Fed. Cas. No. 15,129; *U. S. v. Haines*, (1829) 5 Mason (U. S.) 272, 26 Fed. Cas. No. 15,275.

Suspension of free command.—Wherever by the overt acts of the crew the authority of the master in the free navigation or management of the ship, or in the free exercise of his rights and duties on board, is entirely overthrown, and there is intentionally caused by such acts a suspension, actual or constructive, of his power of command, it is a revolt of the crew. *U. S. v. Haines*, (1829) 5 Mason (U. S.) 272, 26 Fed. Cas. No. 15,275.

Direct or positive force upon or constraint or imprisonment of the master is not essential. *U. S. v. Forbes*, (1845) Crabbe (U. S.) 558, 25 Fed. Cas. No. 15,129.

Revolts on shipboard consist not only in attempts to usurp the command from the master, or to transfer it to another, or to deprive him of it, for any purpose, by violence, but in resisting him in the free and lawful exercise of his authority. *U. S. v. Peterson*, (1846) 1 Woodb. & M. (U. S.) 305, 27 Fed. Cas. No. 16,037.

Forcible displacement.—Where a portion of the crew of the steamer forcibly displaced

the master thereof from command and took possession of the vessel, this did not constitute the offense of piracy but of mutiny. (1872) 14 Op. Atty-Gen. 589.

Incompetent master.—If a person substituted as master be grossly incompetent to the duties of his station from want of skill or bad habits, or profligate and cruel behavior, the seamen may be justified in refusing to do duty or to remain by the ship. *U. S. v. Cassidy*, (1837) 2 Sumn. (U. S.) 582, 25 Fed. Cas. No. 14,745.

Disarming master.—The crew have no right to disarm the captain, though using a deadly weapon, if they are in a mutinous state and using personal violence to resist his lawful commands. *U. S. v. Peterson*, (1846) 1 Woodb. & M. (U. S.) 305, 27 Fed. Cas. No. 16,037.

A mere disobedience of orders by one or two of the seamen, without combining with the others to produce a deliberate disobedience, although it is highly censurable and may be punished by the master on board the ship or by forfeiture of wages, is not a revolt. *U. S. v. Forbes*, (1845) *Crabbe* (U. S.) 558, 25 Fed. Cas. No. 15,129.

Resisting lawful commands.—A master is prevented in the free and lawful exercise of his authority, within the meaning of the Act, if he be prevented from carrying into effect any one lawful command; and a command to continue the business of whaling is *prima facie* lawful. *U. S. v. Borden*, (1857) 1 Sprague (U. S.) 374, 24 Fed. Cas. No. 14,625.

A combination to refuse to pursue such business is not, of itself, the intimidation required as an element to constitute the crime, but it may be the means of intimidation. *U. S. v. Borden*, (1857) 1 Sprague (U. S.) 374, 24 Fed. Cas. No. 14,625.

Resisting sailing of unseaworthy vessel.—If subsequent to the shipment and commencement of service the vessel is believed not to be seaworthy, the seamen cannot refuse

obedience, but may ask a survey if in port, and if not, but within sight of land, request the master to return and have the survey. Should he then conduct himself unreasonably, or in any way treat them with unnecessary severity, their remedy is at law after their return, and not a resort to violence unless in danger of the actual loss of life, and then at their peril as the result may turn out. *U. S. v. Staly*, (1846) 1 Woodb. & M. (U. S.) 338, 27 Fed. Cas. No. 16,374.

If seamen have reason to believe, and do believe, a vessel is unseaworthy before the voyage is begun, they may lawfully refuse to go to sea in her. But they must prove these facts. *U. S. v. Nye*, (1855) 2 Curt. (U. S.) 225, 27 Fed. Cas. No. 15,906.

If the crew of a vessel, acting in good faith and upon reasonable grounds of belief, refuse to go to sea because of the unseaworthiness of the vessel, they cannot be found guilty of revolt, even though the jury should not upon all the evidence be in doubt as to the actual seaworthiness of the vessel. *U. S. v. Givings*, (1844) 1 Sprague (U. S.) 75, 25 Fed. Cas. No. 15,212.

If the seamen as soon as they could examine the vessel and her sails after coming on board, and decide on her seaworthiness, did so, and then reasonably objected to enter on their contract, they were not punishable as criminals for refusing merely to begin to serve at all under their contract. *U. S. v. Staly*, (1846) 1 Woodb. & M. (U. S.) 338, 27 Fed. Cas. No. 16,374.

If no actual revolt is made, section 5359 punishes, though in a milder manner, attempts to commit a revolt and various acts likely to lead to mutiny, and among them to assemble with others on board "in a tumultuous and mutinous manner." *U. S. v. Peterson*, (1846) 1 Woodb. & M. (U. S.) 305, 27 Fed. Cas. No. 16,037.

See also cases under R. S. sec. 5359, *supra*, p. 924, for general construction of the original Act.

[VIII. MISCELLANEOUS PROVISIONS.]

Sec. 4612. [*Definitions, schedule, and tables.*] In the construction of this Title, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the "master" thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a "seaman;" and the term "vessel" shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river, to which the provisions of this Title may be applicable, and the term "owner" shall be taken and understood to comprehend all the several persons, if more than one, to whom the vessel shall belong.

SCHEDULE.
TABLE A.

FORM OF ARTICLES OF AGREEMENT.

UNITED STATES OF AMERICA.

(Date and place of first signature of agreement, including name of shipping-office):

It is agreed between the master and seamen or mariners of the _____, of which _____ is at present master, or whoever shall go for master, now bound from the port of _____, _____, to _____, _____, (here the voyage is to be described, and the places named at which the vessel is to touch, or if that cannot be done, the general nature and probable length of the voyage is to be stated.)

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service, to be duly performed, the said master hereby agrees to pay the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale. And it is hereby agreed that any embezzlement, or willful or negligent destruction of any part of the vessel's cargo or stores, shall be made good to the owner out of the wages of the person guilty of the same; and if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the master or officer in charge of the vessel, in a quiet and orderly manner, who shall thereupon take such steps as the case may require. And it is also agreed that (here any other stipulations may be inserted to which the parties agree, and which are not contrary to law).

In witness whereof the said parties have subscribed their names hereto, on the days against their respective signatures mentioned.

Signed by _____, master, on the _____ day of _____, eighteen hundred and _____.

Signature of crew.	Birthplace.	Age.	Height.		Description.		Wages per month.	Wages per run.	Advance wages.	Amount of monthly allotment.	Time of service.		Hospital money.	Whole wages.	Wages due.	Place and time of entry.	Time at which he is to be on board.	In what capacity.	Shipping commissioner's signature or initials.	Allotment payable to —	Conduct qualifications
			Feet.	Inches.	Complexion.	Hair.					Months.	Days.									

NOTE. — In the place for signatures and descriptions of men engaged after the first departure of the ship, the entries are to be made as above, except that the signatures of the consul or vice-consul, officer of customs, or witness before whom the man is engaged, is to be substituted for that of the shipping-master.

ACCOUNT OF APPRENTICES ON BOARD.

Christian and surname of apprentice in full.	Date of registry of indenture.	Port at which indenture was registered.	Date of register of assignment.	Port at which assignment was registered.

SCALE OF PROVISIONS TO BE ALLOWED AND SERVED OUT TO THE CREW DURING THE VOYAGE.

	Sunday.	Monday.	Tuesday.	Wednesday.	Thursday.	Friday.	Saturday.
Water	4	4	4	4	4	4	4
Biscuit	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$
Beef, salt			$1\frac{1}{2}$		$1\frac{1}{2}$		$1\frac{1}{2}$
Pork, salt		1		1		1	
Flour	$\frac{1}{2}$		$\frac{1}{2}$		$\frac{1}{2}$		
Canned meat	1			1			
Fresh bread			$1\frac{1}{2}$ pounds	daily.			
Fish, dry, preserved, or fresh						1	
Potatoes or yams	1	1	1	1	1	1	1
Canned tomatoes	$\frac{1}{2}$					$\frac{1}{2}$	
Pease			$\frac{1}{2}$			$\frac{1}{2}$	
Beans		$\frac{1}{2}$		$\frac{1}{2}$			
Rice		$\frac{1}{2}$		$\frac{1}{2}$			$\frac{1}{2}$
Coffee (green berry)	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$
Tea	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$	$\frac{3}{8}$
Sugar	3	3	3	3	3	3	3
Molasses	$\frac{1}{2}$		$\frac{1}{2}$		$\frac{1}{2}$		
Dried fruit	3		3		3		
Pickles		$\frac{1}{4}$		$\frac{1}{4}$		$\frac{1}{4}$	
Vinegar			$\frac{1}{2}$				$\frac{1}{2}$
Corn meal	4				4		
Onions	4				4		4
Lard	1	1	1	1	1	1	1
Butter	1	1	1	1	1	1	1
Mustard, pepper, and salt sufficient for seasoning.							

SUBSTITUTES.

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half

ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the master may provide, but the right at any time to demand the foregoing scale of provisions.

The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the forecabin of each vessel.

TABLE B.

CERTIFICATE OF DISCHARGE.

Name and official number of ship.	Port of registry.	Tonnage.	Description of voyage or employment.	Name of seaman.	Place of birth.	Date of birth.	Character.	Declines to give statement of character.	Capacity.	Date of entry.	Date of discharge.	Place of discharge.

I certify that the above particulars are correct, and that the above-named seaman was discharged accordingly.

Dated — day of —, eighteen hundred and —.
(Signed) —, Master.
(Countersigned) —, Seaman.

Given to the above-named seaman in my presence this — day of —, eighteen hundred and —.
(Signed) —,
Shipping-Commissioner.

TABLE C.

FEES, (SEAMEN).

Fee payable on engaging crew, for each member of the crew, (except apprentices)	\$2 00
Fee payable on discharging crew, for each member of crew discharged	50

TABLE D.

FEES, (APPRENTICES).

For each boy apprenticed to the merchant service, including the indenture \$5 00

TABLE E.

REDUCTION FROM WAGES OF SEAMEN.

In partial repayment of the fees payable in Table C, in respect of engagements, from the wages of each member of the crew, twenty-five cents.

In respect of discharges, from the wages of each member of the crew, twenty-five cents. [R. S.]

Act of June 7, 1872, ch. 322, 17 Stat. L. 277.

This section was amended by the Act of Dec. 21, 1898, ch. 28, sec. 23, 30 Stat. L. 762, by substituting the scale of provisions and substitutes in Table A, as here given, in place of that in the section as originally enacted which was as follows:

	Bread.	Beef.	Pork.	Flour.	Pease.	Rice.	Barley.	Tea.	Coffee.	Sugar.	Water.
	Lbs	Lbs	Lbs	Lbs	Pts	Pts	Pts	Ozs	Ozs	Ozs	Qts.
Sunday	1	1½	1½	½	½	.....	.....	.....	.....	.....	.....
Monday	1	1½	1½	½	½	.....	.....	.....	.....	.....	.....
Tuesday	1	1½	1½	½	½	.....	.....	.....	.....	.....	.....
Wednesday	1	1½	1½	½	½	.....	.....	.....	.....	.....	.....
Thursday	1	1½	1½	½	½	.....	.....	.....	.....	.....	.....
Friday	1	1½	1½	½	½	.....	.....	.....	.....	.....	.....
Saturday	1	1½	.....	.....	.....	.....	.....	.....	.....	.....	.....

"(Here any stipulation for changes, or substitution of one article for another, may be inserted.)

"SUBSTITUTES.

"One ounce of coffee, or cocoa, or chocolate, may be substituted for one-quarter ounce of tea; molasses for sugar, the quantity to be one-half more; one pound of potatoes or yams, one-half pound flour or rice; one-third pint of pease or one-quarter pint of barley may be substituted for each other. When fresh meat is issued, the proportion to be two pounds per man per day, in lieu of salt meat. Flour, rice, and pease, beef and pork, may be substituted for each other, and, for potatoes, onions may be substituted."

It is provided by section 26 of the amending Act that the provisions of section 23, above given, "shall not apply to fishing or whaling vessels or yachts." See *supra*, p. 870.

For exceptions, see Act of June 9, 1874, ch. 260, note thereunder, and provisions following, *supra*, p. 850.

The fees provided by tables C, D, and E are abolished by the Act of June 19, 1886, ch. 421, sec. 1. See SHIPPING AND NAVIGATION.

Foreign vessels.—This section does not exclude foreign vessels from the operation of the statute, by declaring that a person in

command of a vessel belonging to a citizen of the United States shall be considered the "master" thereof. U. S. v. Sullivan, (1890) 43 Fed. Rep. 602.

The last clause but one of section 4612 seems to be conclusive on the point that the word "vessel" as used in title 53 includes a foreign vessel as well as a domestic one. U. S. v. Sullivan, (1890) 43 Fed. Rep. 602.

Merchant vessels only.—This section applies only to merchant vessels. The *Grace Darling*, (1878) 2 Hask. (U. S.) 278, 10 Fed. Cas. No. 5,651.

Vessel defined.—A steam ferryboat used for the purpose of transporting trains across the Mississippi river, used as a portion of an interstate railroad line so as to form a continuous line of transportation, is a ship within the meaning of this section. The *St. Louis*, (1891), 48 Fed. Rep. 312.

A steam dredge employed in the work of cleaning out and deepening channels in navigable waters, but without means of propulsion, is a "vessel" as defined by R. S. sec. 3, and persons engaged in working on such dredge and the accompanying scows are seamen within the meaning of the above section, and consequently entitled to a maritime lien for their wages. *Saylor v. Taylor*, (C. C. A. 1896) 17 Fed. Rep. 476.

Seamen defined.—The effect of these definitions "is only to declare in a certain class of cases, to wit, ships, 'belonging to any citizen of the United States,' two things already well established: (1) That the person having the command of a ship shall be deemed the master thereof; and (2) that every person employed thereon shall be deemed a seaman. But the section does not declare that the term 'seamen' as used in the Act, or that the Act itself shall be held to apply only to seamen serving on ships belonging to citizens of the United States." *Deady, J.*, in U. S. v. McArdle, (1873) 2 Sawy. (U. S.) 367, 26 Fed. Cas. No. 15,653.

This section does not declare that the word "seamen," as used in the statute, is confined to one employed on a vessel belonging to a citizen of the United States, but rather and only that every person employed on such a vessel should be considered a "seaman." U. S. v. Sullivan, (1890) 43 Fed. Rep. 602.

But see *Grant v. U. S.*, (C. C. A. 1893) 58 Fed. Rep. 694, in which it was held that R. S. sec. 4601 (since repealed), relating to harboring or secreting "any seamen belonging to any vessel," was not applicable to a vessel not belonging to a citizen of the United States.

To the same effect, see *U. S. v. Minges*, (1883) 16 Fed. Rep. 657.

An assistant engineer of a steam vessel is a seaman, within the meaning of this section, though he is employed by the chief engineer,

who was under a contract with the vessel to supply his assistants for a lump sum. The *D. C. Fogel*, (1890) 41 Fed. Rep. 155.

Printing scale in articles.—The scale of provisions provided by this section must be printed in the copy of shipping articles for coastwise steamers and posted. (1899) 22 Op. Atty.-Gen. 349.

Food and allowances.—See further R. S. secs. 4568, 5347, and notes, *supra*, pp. 893, 922.

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